

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE,
Petitioner,

VS.

LORIE DAVIS,
Respondent.

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)
)
) CIVIL ACTION NO.
) 4:09-CV-1896
)
) 9:02 A.M.
)
)

EVIDENTIARY HEARING
BEFORE THE HONORABLE KEITH P. ELLISON
APRIL 30, 2019
VOLUME 2

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(Call to Order of the Court.)

THE COURT: Thank you. Please be seated.

I was pleased to hear from the director -- the director's counsel concerning Ms. Siegler.

Do you -- have you received that -- that -- those pleadings?

MS. SCARDINO: Yes, Your Honor. I've started reviewing them. Ms. Miranda just provided us with a copy, and she contacted me last night to tell me about her conversation.

THE COURT: I'm happy we made contact. I'm happy that you're willing to take the lead in working out the technology. Is there anything we need to discuss now, or is it -- should I assume that things will be -- will proceed as -- as -- as prognosis suggests?

MS. MIRANDA: There are a couple of items, if we can take them up now, Your Honor, with respect to her testimony. And one of them -- I mean, we're going to work on the technology, but with respect to how we go from where we are now to where we get with her, I believe they anticipate finishing up their case today, potentially.

Is that correct?

MS. SCARDINO: Yes, Your Honor.

MS. MIRANDA: And then we have deposition designations for the same witnesses that testified, and we weren't able, unfortunately, with the timing to get them all together.

Video Deposition of Kelly Siegler

THE COURT: That's all right. That's okay.

MS. MIRANDA: So our designations overlap substantially. So there's a lot of repeats, but what we wanted to propose to the Court -- I believe they're planning to play Ms. Siegler's designations today, and then they would rest their case, and then in the interim between now and Thursday, we could edit ours down to just the portions that don't overlap so that we don't have to play those all over again for the Court.

THE COURT: That sounds like a plan.

MS. MIRANDA: Okay. And so then if we could have that time, then we would finish with their case, and then we would reconvene on Thursday, play those, and then take Ms. Siegler's --

THE COURT: Works for me.

MS. MIRANDA: -- live testimony.

MS. SCARDINO: We do have one more witness after Ms. Siegler's video this morning, and that's Mr. Gaiser, but we anticipate finishing up early afternoon.

THE COURT: Good. Okay. Good. Good. This is very promising.

You ready to call Ms. Siegler by deposition?

MS. SCARDINO: Yes, Your Honor.

(Video deposition of Kelly Siegler played as follows.)

EXAMINATION

Q So from approximately 1989 to 2008, you worked very closely

Video Deposition of Kelly Siegler

1 with Mr. Bonds on a lot of your cases?

09:04:43 2 **A** It was off and on. He would be transferred around, and I
3 would be transferred around. So it wasn't consistently the
4 whole time, no.

09:04:49 5 **Q** Okay. When you did work on a case together, you would
6 oftentimes accompany each other to witness interviews, correct?

09:04:59 7 **A** Define "often."

09:05:00 8 **Q** Well, more often than not?

09:05:02 9 **A** No.

09:05:03 10 **Q** No? How often would he accompany you to a witness
11 interview?

09:05:10 12 **A** I did most of my witness interviews by myself.

09:05:13 13 **Q** You did?

09:05:14 14 **A** Yeah.

09:05:14 15 **Q** And would you take notes when you did those witness
16 interviews?

09:05:18 17 **A** No. I didn't have time. I was talking.

09:05:21 18 **Q** You didn't take any notes after you left the interview to
19 remember what you had spoken with the witness about?

09:05:27 20 **A** Maybe sometimes.

09:05:29 21 **Q** But most of all -- most of the time, you just kept it up in
22 your head?

09:05:32 23 **A** I tried.

09:05:34 24 **Q** Well, you're very detail oriented, right?

09:05:37 25 **A** I hope most lawyers are.

Video Deposition of Kelly Siegler

Q And details matter in circumstantial cases a lot, right?

A Yes.

Q You have to be meticulous, thorough, organized to solve these cold cases, right?

A I think any case you handle as a prosecutor requires the same things.

Q So is that a yes?

A As I said, I think all cases we work on require the same things.

Q Okay. Require you to be meticulous, thorough and organized, right?

A On any case.

Q Okay. And in the Temple case, you testified that you won circumstantial -- circumstantial cases by paying attention to detail. That's a true statement, right?

A Yes.

Q Okay. And in the Temple case, you testified that inconsistent statements of material witnesses fell under Brady, and a witness is material if he gets called to testify at trial. Do you recall that?

A No.

Q You don't recall making that statement?

A No.

Q Okay. We can come back to it, then, in a moment.

Okay. Going on to the offense reports, what was the policy

Video Deposition of Kelly Siegler

1 about disclosing offense reports to the defense back in
2 1999-2002?

09:07:01 3 **A** The office had an open file policy.

09:07:04 4 **Q** And what does that mean?

09:07:07 5 **A** For the most part, offense reports were open for the defense
6 to read.

09:07:12 7 **Q** Okay. So let's break that down. "For the most part," when
8 were they not available for the offense to read -- the defense
9 to read?

09:07:20 10 **A** What does that have to do with the issue we're here for
11 today having to do with the ring of snitches that you claim I
12 manipulated?

09:07:28 13 **MS. SCARDINO:** Objection, nonresponsive.

09:07:29 14 **BY MS. SCARDINO:**

09:07:31 15 **Q** I'd like to talk -- ask you again: What did you mean for
16 the most part these offense reports were available for the
17 defense to read?

09:07:39 18 **A** I'm not going to answer questions about every case I ever
19 handled.

09:07:43 20 **Q** Okay.

09:07:43 21 **A** That's not what this deposition is about.

09:07:45 22 **Q** So are you refusing to answer my question?

09:07:47 23 **A** Yes.

09:07:47 24 **MR. DOYLE:** What she wants to know --

09:07:48 25 **Q** Now, I'm going to ask this question about the offense

Video Deposition of Kelly Siegler

1 reports. Going back to it, you said, quote, for the most part,
2 the defense was able to see the offense reports.

09:07:57 3 What did you mean, "For the most part"?

09:08:00 4 **A** It was an open file policy.

09:08:02 5 **Q** Okay. But you said, "For the most part." So that means not
6 all offense reports were given to them, correct?

09:08:10 7 **A** Correct.

09:08:11 8 **Q** Okay. If the witness -- if the investigator did not testify
9 in the trial, were you obligated to turn those offense reports
10 over to the defense?

09:08:24 11 **A** I don't understand what that has to do with the Jeffrey
12 Prible case and the ring of snitches that you-all have alleged
13 that I orchestrated.

09:08:32 14 I'm not going to ask -- I'm not going to answer questions
15 about every case --

09:08:36 16 **Q** I asked the question. Are you going to answer it or not?

09:08:38 17 **A** What was the question?

09:08:39 18 **Q** "For the most part" -- you said, "For the most part, the
19 defense was able to see the offense reports."

09:08:45 20 What did you mean, "For the most part"? When were they not
21 able to see the offense reports?

09:08:53 22 **A** Well, the most obvious exception to seeing the offense
23 report was if an examining trial was requested.

09:09:00 24 **Q** Okay. And was an examining trial requested in this case?

09:09:03 25 **A** In the Jeffrey Prible case?

Video Deposition of Kelly Siegler

Q Right. Yes.

A I don't think so.

Q Okay. Were the offense reports in this matter of those investigators [sic] that did not testify at Mr. Prible's trial, were those offense reports given to Mr. Prible's defense attorneys?

A Yes.

Q When?

A Whenever they came to look at the file.

Q And when an attorney did come and look at the file, were you in the room with them when they looked at the file?

A Sometimes I was. Sometimes I wasn't.

Q Okay. And you'll agree with me that when you say "open file," ultimately, the prosecutor is the only person that knows what is in the entire file, correct?

A Correct.

Q Okay. And if you had removed certain things from the file, there would be no way for the defense to know that unless you told them that, correct?

A Correct.

Q What was your policy regarding the production of -- or the disclosure of written witness statements to the defense?

A In the Prible case?

Q Yes, in the Prible case.

A The defense got to see it.

Video Deposition of Kelly Siegler

Q When did they see it?

A Whenever they came to look at the file.

Q So this was a different situation than in the Temple case where you didn't present the -- or offer -- or disclose the written witness statements until after the witness had testified; is that correct?

A Yes.

Q Okay. And it was different because the Temple case was an examining trial?

A Yes.

Q And so you -- you had different rules that you went by if it was an examining trial versus just a normal trial?

A According to the office policy, yes.

Q What was the DA's policy regarding the disclosure of Brady evidence that came to light after a trial was over?

A The same as it was before. If you heard about Brady information, you disclosed it.

Q Even after the trial was over, you needed to make that disclosure to defense counsel?

A Yes.

Q Were you at the DA's office during the state habeas proceeding for Mr. Temple?

A What years?

MR. DOYLE: Prible.

BY MS. SCARDINO:

Video Deposition of Kelly Siegler

Q I'm sorry. Mr. Prible.

A What were the years of that proceeding?

Q I believe 2004, 2005.

A I was still at the office. Was I involved in it, I was not in appellate.

Q Okay. But you would have been consulted by the appellate group prior to them appearing at the state habeas hearing?

A I never appeared at any state habeas hearing.

Q I'm sorry. Let me -- that might have been confusing.

The people in the appellate group at the DA's office that were prepping for the state habeas hearing, they would have consulted you, as the trial attorney on that case, prior to that hearing, correct?

A I would hope so.

Q Right. I mean, that -- that would make sense that they would come to you since you had --

A They didn't always.

Q -- been the person that tried the case?

A They didn't always.

Q Did they in this case?

A I don't remember.

Q Exhibit 154 is excerpts from that policy manual. And I'll represent to you that this policy manual was produced by Brian Rose in response to a Public Information Act request to me as the manual that would have been in place in 2001 and 2002.

Video Deposition of Kelly Siegler

And if you go to page 1 -- or page 25, so it's

Exhibit 154-25 --

A Not all of 2001 because the date is August 2001. So there could have been something different at some part -- point in 2001.

Q So do you disagree with Mr. Rose's representation that this is the policy manual that was in effect in 2001 and 2002?

A Well, from the bottom of the page, it says this is effective August 16 of 2001. So more than half of 2001, some of these things could have been different.

Q Okay. And you tried Mr. Prible's case in 2002?

A Yes.

Q Okay. So if you go to page -- Exhibit 154-25 -- and I know that your eyesight is -- is recovering, so I can read this to you. It says, quote, a prosecuting attorney should not impede defense counsel's access to witnesses but may accompany and assist witnesses in any interview with defense counsel.

Now, if a prosecutor does not reveal the existence of a witness, that would be an impediment, right?

A Not necessarily.

Q Well, how would the defense attorney know about a witness if the prosecutor didn't disclose the identity of that witness?

A I don't know who the witness is.

Q Okay. How about a jailhouse informant that came to you to talk with you about a case? There's no way a defense attorney

Video Deposition of Kelly Siegler

1 could have known that unless you had disclosed that, correct?

09:14:19 2 **A** I think that answer is going to always depend on the
3 circumstances of a given case.

09:14:23 4 **Q** Okay. I just gave you the circumstances. What's your
5 answer with those circumstances?

09:14:28 6 **A** The same.

09:14:29 7 **Q** So you can't answer yes or no?

09:14:31 8 If a prosecutor does not reveal the existence of a witness,
9 that would be an impediment. That's my -- my premise that I'm
10 asking you the question, and the -- the cons- -- the
11 circumstances are if a jailhouse informant reached out to you,
12 Kelly Siegler, to talk with you about a case, the defense
13 attorney would have no way of knowing about that witness unless
14 you disclosed the identity of that witness to them; isn't that
15 correct?

09:14:59 16 **A** What's your question?

09:15:01 17 **Q** That was my question. Can you answer that question?

09:15:04 18 **A** I cannot.

09:15:05 19 **Q** You can't answer that?

09:15:06 20 **A** I don't think that's necessarily always going to be an
21 impediment.

09:15:10 22 **Q** Okay. If a jailhouse informant -- in this case, Nathan
23 Foreman is one -- came to you and said he had information about
24 Prible's case, the defense attorney would have no way of knowing
25 that that witness came to you with that information unless you

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1 disclosed that to the defense attorney, wouldn't you agree?

09:15:33 2 **A** No, I don't agree with that statement.

09:15:37 3 **Q** Okay. Moving on, also on Exhibit 154-25, it says, "A
4 prosecuting attorney shall provide information known to the
5 prosecuting attorney which is subject to a voluntary discovery
6 agreement or Court order throughout the case."

09:15:55 7 Now, this doesn't look like an open file policy to me.

09:15:59 8 **A** What doesn't?

09:16:00 9 **Q** This -- this statement saying that the prosecuting attorney
10 shall provide information, which is subject to a voluntary
11 discovery agreement or a Court order. Is that different from an
12 open file policy? Right?

09:16:12 13 **A** I didn't write the office manual. I have no idea what they
14 meant when they wrote it.

09:16:16 15 **Q** Okay. But you'll agree that this statement does not
16 describe an open file policy, right?

09:16:21 17 **A** I don't agree with that. I don't know what they meant when
18 they wrote this.

09:16:25 19 **Q** Did you ever enter into a voluntary discovery agreement with
20 defense counsel?

09:16:29 21 **A** Orally voluntarily all the time.

09:16:32 22 **Q** Okay. But nothing in writing?

09:16:34 23 **A** I might have had a few.

09:16:37 24 **Q** Okay. When a defense attorney would come and look at the
25 file, would you take notes of what was shown to that defense

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1 attorney?

09:16:46 2 **A** Sometimes.

09:16:47 3 **Q** Did you in this case?

09:16:48 4 **A** In the Prible case?

09:16:49 5 **Q** Uh-huh.

09:16:51 6 **A** No.

09:16:51 7 **Q** Okay. Going back on Exhibit 154-25, it also says, "A
8 prosecuting attorney shall participate in good faith in pretrial
9 discovery. Absent voluntary discovery, the prosecuting attorney
10 shall diligently and timely divulge matters as may be ordered by
11 the Court, end quote.

09:17:12 12 Now, again, there's no mention of an open file policy in
13 that paragraph, right?

09:17:16 14 **A** Not in this paragraph, no.

09:17:20 15 **Q** What is a timely divulging of information, in your mind?

09:17:26 16 **A** I don't know. I didn't write that paragraph.

09:17:28 17 **Q** Okay. You -- let's -- let's talk about your understanding
18 of the requirement that you timely disclose Brady -- Brady
19 information. What is your understanding of the timely
20 disclosure requirement?

09:17:45 21 **A** To make good faith reasonable efforts to disclose.

09:17:49 22 **Q** And at what point are you required to disclose Brady
23 information?

09:17:53 24 **A** That depends on the circumstances.

09:17:56 25 This is 2017. I have looked at, investigated, worked on,

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1 worked questions up for, tried, given advice on, talked about
2 and gone over maybe 500 murder cases since this one.

09:18:16 3 Q Okay.

09:18:17 4 A That's a lot.

09:18:18 5 Q And so you didn't review any of your materials from this
6 case in order to prepare yourself for this deposition today?

09:18:26 7 A No. I don't have them.

09:18:28 8 Q Okay. Well, was there anything preventing you from getting
9 the work product file and the other -- the rest of the file from
10 the DA's office prior to your deposition?

09:18:38 11 A I don't have them. I don't work there any more.

09:18:41 12 Q I'm asking -- I understand that. I'm asking you: Was there
13 anything preventing you from asking the district attorney's
14 office to allow you to see the file prior to your deposition
15 today?

09:18:50 16 A No one told me to do that.

09:18:53 17 Q And -- my question was: Was there anything preventing you
18 from making a phone call to the DA's office to ask if you could
19 see this file prior to your deposition today?

09:19:03 20 A No.

09:19:04 21 Q Mr. Prible, I'll represent to you, he gave his clothes to
22 the detectives that day so they could test for trace evidence,
23 and there was no blood, no Kutzit -- that's the accelerant used
24 to start the fire -- no hair, no burns, no soot, no fibers of
25 any kind connecting him to the murder scene. You don't recall

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1 that?

09:19:31 2 **A** Anything that you would represent to me, I can't agree to.

3 I've read your petition. It's full of lies. So whatever you

4 might tell me you're representing to me, I really need to see

5 for myself. And I don't remember all the details of the case.

09:19:47 6 **Q** Okay. When did you get involved in this case?

09:19:58 7 **A** 2001, maybe 2000. I don't remember.

09:20:03 8 **Q** Okay. So the Harris County Sheriff's Office had interviewed

9 all witnesses and submitted all of their reports in 1999, and

10 the investigation was completed by 1999. Do you remember that?

09:20:15 11 **A** I wasn't involved in 1999, and I disagree with that.

09:20:19 12 **Q** You disagree with that?

09:20:20 13 **A** Yes.

09:20:21 14 **Q** Okay. What was done post 1999?

09:20:23 15 **A** That's when I got the case.

09:20:25 16 **Q** Yes. And what did you do when you started investigating the

17 case?

09:20:29 18 **A** Started from the beginning all over again.

09:20:32 19 **Q** Did you interview witnesses?

09:20:35 20 **A** Yes.

09:20:36 21 **Q** Okay. But you didn't make any notes of those witnesses?

09:20:40 22 **A** If I did, they're in the file.

09:20:42 23 **Q** They would be in your work product file?

09:20:44 24 **A** No. They would be in the file.

09:20:46 25 **Q** So someone in the DA's office was working on the case from

Video Deposition of Kelly Siegler

1 the very beginning in April 1999, but for whatever reason, they
2 did not ask to accept the charges at that time?

09:21:00 3 **A** I don't know. I don't know who was working on it before me.

09:21:03 4 **Q** Okay. And presumably, it's because the evidence didn't --
5 at that time didn't rise to the level of probable cause;
6 otherwise, they would have accepted charges on a five-person
7 murder, right?

09:21:13 8 **MS. MIRANDA:** Objection, form.

09:21:14 9 **A** I disagree with that.

09:21:15 10 **BY MS. SCARDINO:**

09:21:16 11 **Q** You do disagree with that?

09:21:17 12 **A** I do.

09:21:18 13 **Q** Okay. Was this case presented to the Grand Jury for
14 indictment in 1999?

09:21:23 15 **A** I didn't have the case in 1999.

09:21:25 16 **Q** And -- and I understand that, although you did have the
17 file. And so I'm asking you if you recall, from your review of
18 the file, whether the case was presented to the Grand Jury for
19 indictment in '99?

09:21:38 20 **A** Not that I recall, no.

09:21:39 21 **Q** Okay. So the case went cold in -- in 1999, and there's
22 nothing new in the file, I'll represent to you, until 2001,
23 although you've seen the file. Do you -- would you agree with
24 that statement?

09:21:53 25 **MR. DOYLE:** I don't -- I don't think she has seen --

Video Deposition of Kelly Siegler

A That the case went cold, no.

MR. DOYLE: I'll object, the characterization that she had seen the file.

BY MS. SCARDINO:

Q Okay. Let -- let me restate since it's been 17 years.

All of the investigate -- all of the investigative reports and the evidence in the file is dated through 1999, but then nothing else is new in the file until 2001. Do you recall that?

A I don't recall that.

Q Okay. I'm going to show you Exhibit 46. Exhibit 46 is a March 1st, 2001, fax from William Watson to Bonds -- to Johnny Bonds. Do you see that?

A I do.

Q Okay. And Dr. Watson was the state's DNA expert in this case. Do you recall?

A He's the witness who testified, yes.

Q Okay. So it appears, from the date of this fax, that this case, the Prible case, is back on your and Mr. Bonds' radar at least by March 1st, 2001, correct?

A Yes.

MS. MIRANDA: Objection, form.

BY MS. SCARDINO:

Q Exhibit 52 is an April 4th, 2001, letter from an inmate at FCI Beaumont named Jesse Moreno to you. Now, if you need some time to read this, we can go off the record.

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So on April 4th, 2001, you received this letter,

Exhibit 52, from Jesse Moreno, and Mr. Moreno was --

A Well, that's the date he wrote the letter.

Q Okay. The date he wrote the letter. So sometime after April 4th, 2001, probably within a couple of days, you received this letter from Mr. Moreno, correct?

A Within a week, I would say, yes.

Q Okay. And Mr. Moreno was a federal prison inmate that had testified for you in the murder trial of Jason Morales a few years prior. Do you remember that?

A Yes.

Q Okay. In exchange, you dismissed a charge of aggravated robbery against him in a home invasion case in which the victims were beaten with a hammer. Do you recall that?

A I don't remember what happened with Jesse Moreno's case having to do with Jason Morales. I don't remember.

Q With Jason Morales? You don't recall dismissing a charge of aggravated -- of aggravated robbery against him?

A I do not.

Q Okay.

A I don't know what happened to his case. I can't remember.

Q Okay. So you might have done it, but you just can't recall?

A I do not remember.

Q Okay. Do you recall that you also did not charge him in a capital murder case in which he was a suspect?

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A I don't remember that at all.

Q You don't recall that at all?

A No.

Q Okay. I'm going to show you Exhibit 70. This is an excerpt of Dan Cogdell, Hermilio Herrero's attorney, questioning Mr. Moreno.

And Mr. Cogdell asks, question, "Isn't it a fact, Mr. Moreno, that in addition to the crime that you were charged with, which was later dismissed after you testified, you were a suspect in a capital murder case?"

Answer, "Yes."

Question, "So in addition to the dismissal of the aggravated robbery that was filed, you were never charged with a capital murder case?"

Answer, "No."

Now, does this refresh your memory as to whether you dismissed a charge of aggravated robbery against Mr. Moreno and also did not charge him in a capital murder case in which he was a suspect --

MS. MIRANDA: Objection, form.

BY MS. SCARDINO:

Q -- in exchange for his testimony in the Jason Morales trial?

A Contrary to what your petition states, I did not handle that capital murder case. It was never mine. It was Mark Vincent's. I had nothing to do with that.

Video Deposition of Kelly Siegler

09:25:50 1 Q Okay. So the answer is no, you did not dismiss a charge of
2 aggravated robbery against Mr. Moreno?

09:25:54 3 A That's not my answer.

09:25:55 4 Q Okay. Then I don't understand your answer.

09:25:58 5 A I don't remember what happened in the cases arising out of
6 Jason Morales. I had nothing to do with the capital murder
7 case. That was not my case, contrary to what you've stated in
8 your petition.

09:26:10 9 Q Okay. Well, I'm -- I'm not talking about the petition right
10 now. I'm just asking you a question. So you're saying that you
11 had nothing to do with that capital murder case?

09:26:21 12 A Correct.

09:26:21 13 Q Okay. But you might have dismissed the charge of aggravated
14 robbery, but you don't recall?

09:26:26 15 A I don't remember if he pled or it was dismissed. I cannot
16 remember.

09:26:29 17 Q Okay. And so when Moreno contacted you in this letter
18 April 4th, 2001, he was being housed in the medium SHU in
19 Beaumont -- FCI Beaumont; isn't that right?

09:26:42 20 A Medium or low. I don't remember.

09:26:43 21 Q Okay. Somewhere in FCI Beaumont in the SHU?

09:26:45 22 A What is the SHU?

09:26:46 23 Q The SHU -- the special housing unit.

09:26:48 24 A I didn't know that.

09:26:49 25 Q Okay. That's just the segregation --

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A I didn't know that.

Q The segregation unit. Okay. I'll refer to it as the SHU,
S-H-U.

Okay. And when he contacted you, he was in the SHU with an
old friend of his from the neighborhood named Jesse Foreman,
wasn't he?

A I don't know who he was with.

Q I'm sorry. Nathan Foreman.

A I don't know who he was.

Q You don't recall that he told you he was in there with
Nathan Foreman?

A From this letter, no.

Q No. I'm asking you, aside from this letter, when he
contacted you, at that time, he was in the SHU with Nathan
Foreman, right?

A I don't know who he was with.

Q Okay. These are the BOP housing records for Nathan Foreman.
And if you look on the second page, nine lines from the bottom,
it says that between February 28th, 2000, and April 18th, 2001,
that Foreman was housed in BMM A-DES, just like we saw with
Mr. Moreno, correct?

A They're not in the same place.

Q Why are they not in the same -- why do you make that
statement?

A Because Jesse Moreno says in his letter he's in isolation.

Video Deposition of Kelly Siegler

1 So wherever they're housed, it doesn't matter. Jesse is in
2 isolation.

09:28:15 3 Q In the SHU, right?

09:28:16 4 A I don't know what the SHU is. That's your word. I've never
5 heard that before.

09:28:19 6 Q Okay. Would you agree that the documents say what they say?

09:28:25 7 A I would agree that Jesse says he's in isolation, which means
8 he's not living with anybody.

09:28:30 9 Q Okay.

09:28:31 10 A That's what the letter says. You -- these documents are
11 from the prison, which you must understand better than I can,
12 but that's not what Jesse says.

09:28:40 13 Q Okay.

09:28:40 14 A He's not with Nathan Foreman, according to his letter.

09:28:44 15 Q Ms. Siegler, did you respond to Jesse Moreno's
16 4/4/01 letter?

09:28:49 17 A In writing?

09:28:51 18 Q In any -- in any way.

09:28:54 19 A Eventually, I talked to him.

09:28:56 20 Q Okay. Well, you didn't respond in writing, then?

09:28:59 21 A I don't think so, no.

09:29:00 22 Q Okay. Eventually, you spoke with him approximately how long
23 after you got that letter?

09:29:08 24 A I don't remember.

09:29:08 25 Q And did you contact him?

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09:29:11 1 **A** At some point, we talked, yes.

09:29:14 2 **Q** So you contacted him? Because he says in his letter you
3 would have to contact -- call him, he's in the SHU, right?

09:29:21 4 **A** I don't remember how we got in touch the next time, but we
5 did get in touch eventually.

09:29:26 6 **Q** Okay. I'm going to show you Exhibit 53, and this is a
7 handwritten letter from Jesse Moreno's mom, and this letter is
8 dated April 10th, 2001. Do you see that?

09:29:51 9 **A** Yes.

09:29:52 10 **Q** And in this letter, she asks you to help her son, right?

09:29:58 11 **A** Okay. What's your question?

09:29:59 12 **Q** She asked you to help her -- help her son, Jesse, right?

09:30:03 13 **A** Yes.

09:30:05 14 **Q** So April 15th, 2001, that article appears. And by this
15 time, you're already speaking with Detective Brown about this
16 case, right?

09:30:17 17 **A** It could have been after this article appeared that I first
18 started talking to Curtis about the case. I don't remember this
19 article coming up while I worked on the case.

09:30:25 20 **Q** And you recall earlier I showed you that March 1st, 2001,
21 fax about this case, and so we discussed that you were already
22 working on the case at that time with Mr. Bonds?

09:30:36 23 **A** I don't think you ever asked me that specific question.

09:30:39 24 **Q** Okay. I'll ask you now. Were you working on this case --
25 was the case on your radar again on April -- on March -- in

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1 March of '01 when that fax was sent to Mr. Bonds from Mr. --
2 from Dr. Watson?

09:30:57 3 **A** I don't know for sure. I don't remember when I got on the
4 case.

09:31:00 5 **Q** Would Johnny Bonds have gotten in on it before you got on
6 it?

09:31:04 7 **A** Yes.

09:31:04 8 **Q** Okay. So he -- he might have been --

09:31:06 9 **A** He was in Special Crimes before me.

09:31:08 10 **Q** No, but I mean, if y'all were working on a case together,
11 would the two of you approach it together or would he be working
12 on a case separately from you working on it?

09:31:14 13 **A** He could have been working separately.

09:31:16 14 **Q** Okay. So you don't -- you can't say whether or not this
15 case, this Tirado/Herrera case was on your radar in March 2001
16 at the date of that fax?

09:31:28 17 **A** The date of this fax, the William Watson fax?

09:31:30 18 **Q** Uh-huh.

09:31:31 19 **A** I don't remember for sure when I started working on the
20 Prible case.

09:31:36 21 **Q** Okay. And so you don't know for sure if you were already
22 working with Detective Brown on this case at the time of this
23 April 15th, 2001, *Houston Chronicle* article?

09:31:46 24 **A** I do not remember.

09:31:47 25 **Q** Okay. You see on page 1 right there it's dated April 26,

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1 2001, and he writes your name down?

09:31:54 2 **A** I see that.

09:31:55 3 **Q** Okay. So, presumably, you talked to him before that date.

4 You spoke with him about his April 4th letter, right; otherwise,
5 he wouldn't have put your name on the phone list?

09:32:06 6 **A** Not necessarily.

09:32:09 7 **Q** Okay. Do you recall if you spoke with him between April 4th
8 and April 26th, 2001?

09:32:14 9 **A** I do not.

09:32:15 10 **Q** Okay. You might have, but you can't recall?

09:32:18 11 **A** It's the wrong phone number to call me at if he put my
12 number down.

09:32:22 13 **Q** Okay. What is that phone number that he's listed?

09:32:24 14 **A** That's the general number.

09:32:26 15 **Q** Okay.

09:32:26 16 **A** So if he -- if he had my correct number, it wouldn't have
17 been this one.

09:32:29 18 **Q** Okay. What was your correct number?

09:32:31 19 **A** 5845, 8339, 5865, not 5800.

09:32:37 20 **Q** Okay. So you don't recall if you spoke with Mr. Moreno
21 before he put your phone number down on his phone list?

09:32:45 22 **A** I do not.

09:32:46 23 **Q** Okay. He also put his U.S. attorney that prosecuted him in
24 a Louisiana criminal case, U.S. Attorney Todd Clemons. Do you
25 see that?

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A I see that.

Q Okay. Are you familiar with Mr. Clemons?

A I remember his name.

Q Okay. What do you remember -- do you -- did you ever meet with him?

A I don't remember.

Q You might have, but you don't recall?

A Correct.

Q Okay. Do you ever recall going to Louisiana and speaking with him about Mr. Moreno's case?

A I don't remember who I talked to.

Q Okay. But you did do that, you just don't recall if you spoke with Mr. Clemons?

A Correct.

Q Okay. So at this point, it looks like, by April 26, 2001, that Mr. Moreno is already contemplating a sentence reduction, wouldn't you say? He put your name down and his U.S. attorney's number down -- attorney's number down?

MS. MIRANDA: Objection, form.

A No.

BY MS. SCARDINO:

Q You disagree with that?

A Yes.

Q Okay. You don't think it's on his mind -- Jesse Moreno's mind at this point, he's hoping to get some kind of sentence

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1 reduction for the information that he has to give you?

09:33:49 2 **A** I think that's on every federal inmate's mind.

09:33:52 3 **Q** Okay. On July 3rd, 2001, you met with Jesse Moreno at the
4 Federal Detention Center in Beaumont. Do you recall that
5 meeting?

09:34:02 6 **A** Not by date specifically, no.

09:34:06 7 **Q** So if you're meeting with a federal prison inmate, you can't
8 just show up and ask to see them, right?

09:34:11 9 **A** Correct.

09:34:11 10 **Q** You have to give the prison advance notice, right?

09:34:14 11 **A** Yes.

09:34:15 12 **Q** You have to request to be able to see the -- the inmate?

09:34:18 13 **A** It's a process.

09:34:20 14 **Q** Right. And how long does that process usually take?

09:34:28 15 **A** Weeks, minimum.

09:34:29 16 **Q** Okay. You don't recall where you were when you met with
17 him --

09:34:34 18 **A** With Jesse?

09:34:34 19 **Q** -- at that first meeting?

09:34:35 20 **A** Right.

09:34:37 21 **A** I remember we went to the Beaumont federal prison. I don't
22 remember which one or where exactly we met, but I remember
23 meeting with Jesse Moreno at least one time in Beaumont.

09:34:49 24 **Q** And you recorded part of that meeting, right?

09:34:52 25 **A** I don't remember that.

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09:34:53 1 Q Did you know Nathan Foreman before you had this interview
2 with Jesse Moreno?

09:35:00 3 A Did I know his name, yes.

09:35:04 4 Q Okay. And -- because Jesse had told you -- had mentioned
5 him previously?

09:35:13 6 A I don't remember how I first heard Nathan Foreman's name.

09:35:16 7 Q Okay. Let's look at pages -- Exhibit 54, page 18. On the
8 bottom part of the page, it says "KS." That's you. It says,
9 "And who was the other guy there? Nathan Foreman?"

09:35:43 10 Jesse Moreno: "Nathan Foreman. He" --

09:35:45 11 Kelly Siegler: "Is he from Houston?"

09:35:48 12 Moreno says, "Yeah, we're all from Houston."

09:35:50 13 And you say, "Beaumont medium, too?"

09:35:54 14 Okay. So it looks like from this transcript that you
15 didn't know Mr. Foreman previously, right?

09:36:04 16 A Not necessarily.

09:36:05 17 Q You might have known him before this?

09:36:07 18 A I might have known him by name. I can't remember.

09:36:10 19 Q Because Jesse might have told you his name previously?

09:36:12 20 A No. I don't know how I found Nathan Foreman, how I got his
21 name first.

09:36:22 22 Q If you look at page 12 -- I'm sorry, page 13, the very top
23 of the page, the second line, Jesse is talking to you. He says,
24 "There was me, him, ah, Dominguez, Ralph Dominguez, and, ah,
25 Nathan Foreman, the one I was asking you about." Do you see

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1 that?

09:36:48 2 **A** Uh-huh. Yes, ma'am.

09:36:48 3 **Q** Does that refresh your memory as to whether Moreno made you
4 aware of Nathan Foreman?

09:36:55 5 **A** It does not.

09:36:58 6 **Q** You still think you knew him previously for some reason
7 beyond Jesse Moreno?

09:37:03 8 **A** Yes.

09:37:03 9 **Q** But you can't tell me why?

09:37:05 10 **A** The Jason Morales trial.

09:37:07 11 **Q** You think Foreman was involved in the Jason Morales trial?

09:37:12 12 **A** I don't -- I don't know if he -- he didn't testify. I don't
13 know if he was involved. I can't remember.

09:37:16 14 **Q** Okay. Now, at this meeting, Jesse Moreno spoke with you
15 about a murder confession he had heard from Hermelio Herrero.

16 Do you remember that?

09:37:24 17 **A** Yes.

09:37:24 18 **Q** Okay. And he said that Herrero confessed to himself,
19 Moreno, to Dominguez and to Nathan Foreman in 1999 when they
20 were all incarcerated together in Beaumont. Do you remember
21 that?

09:37:34 22 **A** Yes.

09:37:38 23 **Q** And two days after this meeting with Moreno on July 3rd, you
24 asked Detectives Davis and Holtke to review the audiotape of
25 that meeting. Do you remember that?

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A To review the audiotape that I took?

Q Yes.

A So --

Q The audiotape that we just referenced, Exhibit 54.

A Okay.

Q And to refresh your memory, I have Exhibit 55, which is a supplemental report from the Harris County Sheriff's Department, and it mentions how you had asked Detectives Davis and Holtke to review the audiotape. Do you see that?

A Okay.

Q Okay. And you accepted charges against Herrero that day, right?

A This day?

Q Yes. I'm sorry. Yeah. You -- you accepted charges against Hermelio Herrero on this day, on July 5th, 2001, right? That's what it says here in this report?

A Where does it say that?

Q Let's see. At the very last line, "Assistant District Attorney Siegler then stated she would accept charges of murder on Hermelio Herrera, Jr., date of birth 10-7-1969," right?

A It says that I would accept the charges. It doesn't say on what date.

Q Okay. Well, it's talking about a conversation that you had with these detectives on July 5th, 2001. Do you see that on the very first line?

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09:39:09 1 **A** I do.

09:39:10 2 **Q** And at the end of talking about that conversation you had
3 with them, Detective Davis states, "I informed Siegler that the
4 information the witness had provided was information that
5 matched the details of what we knew them to be. Assistant
6 District Attorney Siegler then stated she would accept charges
7 of murder on Hermelio Herrero, Jr., date of birth 10/7/1969."
8 Do you see that?

09:39:35 9 **A** I do.

09:39:35 10 **Q** Does that refresh your memory as to whether you accepted
11 charges against Mr. Herrero on July 5th, 2001?

09:39:42 12 **A** It doesn't mean that I accepted the charges on July the 5th.
13 It could have been the following day. It could have been the
14 following week.

09:39:49 15 **Q** Okay.

09:39:49 16 **A** I did accept the charges.

09:39:50 17 **Q** Okay. You also accepted charges against Mr. Prible that
18 day, right?

09:39:55 19 **A** What day?

09:39:57 20 **Q** July 5th, 2001.

09:39:58 21 **A** I don't remember.

09:39:59 22 **Q** You don't recall when charges were accepted against
23 Mr. Prible?

09:40:03 24 **A** I do not.

09:40:06 25 **Q** Now, before you charge -- accepted charges against Herrero,

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1 Hermelio Herrero, did you check to see if he was even
2 incarcerated with Moreno, Dominguez and Foreman on the date he
3 supposedly confessed to them?

09:40:19 4 **A** I would have had Johnny Bonds check on that.

09:40:21 5 **Q** Okay. And what did he find out?

09:40:25 6 **A** I'm assuming that it was consistent with the information we
7 got from Jesse Moreno.

09:40:32 8 **Q** Because if it was inconsistent, it would have been improper
9 to accept charges against Mr. Herrero based entirely on Jesse
10 Moreno's conversation with you, right?

09:40:41 11 **A** We would have needed to look into it further.

09:40:43 12 **Q** And when you accepted charges -- I will -- I will represent
13 to you that charges were accepted against Prible the same day
14 they were accepted against Hermelio Herrero.

09:40:56 15 **A** You need to show me something.

09:40:58 16 **Q** Okay. Exhibit 57, the first page, at the top, it says date
17 prepared, July 5th, 2001, felony charge capital murder against
18 Mr. Prible. Do you see that?

09:41:24 19 **A** Okay. Yes, I see that.

09:41:25 20 **Q** Okay. So you agree that charges were accepted against
21 Mr. Prible on July 5th, 2001, this -- do you agree with that?

09:41:34 22 **A** Yes.

09:41:35 23 **Q** And at that July 3rd, 2001, meeting, you and Mr. Moreno
24 discussed Nathan Foreman, you saw? Do you remember the
25 testimony -- or the recording I just showed you where you

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1 discussed Nathan Foreman?

09:41:47 2 **A** His name was mentioned.

09:41:48 3 **Q** Yes.

09:41:49 4 **A** Nathan Foreman's name was mentioned, yes.

09:41:51 5 **Q** Okay. And at that July 3rd, '01, meeting, did Moreno tell
6 you that Nathan Foreman had heard a confession by Ronald Prible?

09:41:58 7 **A** Ask me that again.

09:41:59 8 **Q** At that meeting that you had with Mr. Moreno, at some point
9 during that meeting, did Mr. Moreno inform you that Mr. Foreman,
10 Nathan Foreman had heard a confession by Mr. Prible?

09:42:12 11 **A** I don't remember what the details were, what Jesse Moreno
12 told me that day.

09:42:17 13 **Q** So he might have told you that, but you just can't recall?

09:42:19 14 **A** I cannot.

09:42:22 15 **Q** Exhibit 56 is a probable cause affidavit dated July 5th,
16 2001, for the arrest of Mr. Prible, and the affiant is Curtis
17 Brown. And you testified in the Temple case that you would
18 often type up the probable cause affidavit for the detectives to
19 sign; is that right?

09:42:47 20 **A** Correct.

09:42:48 21 **Q** Is that -- was that the case here? Did you type up this
22 probable cause affidavit?

09:42:52 23 **A** I don't know because it's signed by Marcy.

09:42:54 24 **Q** Okay. So you -- who is Marcy?

09:42:56 25 **A** A fellow prosecutor that worked in Special Crimes the same

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1 time I did.

09:43:00 2 Q Okay. So you don't know if you typed up this probable cause
3 affidavit?

09:43:04 4 A I don't know for sure.

09:43:06 5 Q Okay. Do you see anything new in that probable cause
6 affidavit that you-all didn't have against Mr. Prible in 1999?

09:43:13 7 A I didn't know what they had in 1999. It wasn't my case
8 then.

09:43:17 9 Q Okay. So you're not denying that there's nothing new in
10 that probable cause affidavit?

09:43:20 11 A I don't know what they had in '99. It wasn't my case then.

09:43:23 12 Q Okay. Did you reach out to Mr. Foreman after your July 3rd,
13 2001, visit with Mr. Moreno?

09:43:34 14 A Ask me again.

09:43:35 15 Q Did you reach out to Mr. Foreman after your July 3rd, 2001,
16 visit with Jesse Moreno?

09:43:40 17 A No.

09:43:40 18 Q You didn't?

09:43:41 19 A I didn't reach out to him, no.

09:43:43 20 Q Did he reach out to you?

09:43:45 21 A Yes.

09:43:45 22 Q Okay. In what form? How did he reach out to you? Did he
23 call you?

09:43:49 24 A He called. He might have written. I don't remember.

09:43:55 25 Q If he had written to you, that would have been kept in your

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1 file, right?

09:43:59 2 **A** Yes. We're talking about the Herrero file because you keep
3 talking about all these letters like they belong to Prible, and
4 they do not.

09:44:07 5 **Q** Well, some of them were found in the Prible file, which
6 we'll get to that in a little bit.

09:44:11 7 But -- okay. So Foreman reached out to you, contacted you,
8 you believe?

09:44:17 9 **A** Yes.

09:44:18 10 **Q** Okay. Might have written. Might have made a phone call.

09:44:24 11 Exhibit 88 is a criminal history report for Nathan Foreman
12 printed out by Johnny Bonds. And all I'm interested in is -- is
13 the date.

09:44:36 14 The date you'll see at the top is August 7th, 2001, and if
15 you go down a little bit more, and it says that Johnny Bonds had
16 printed it out. Do you see that?

09:44:45 17 **A** I do.

09:44:45 18 **Q** Okay. Now, this criminal history report, was this something
19 that you-all would typically run before you met with a potential
20 witness or -- with a potential witness?

09:44:58 21 **A** Or a potential suspect?

09:45:00 22 **Q** Or a potential suspect.

09:45:01 23 **A** Yes.

09:45:01 24 **Q** That was my next question.

09:45:02 25 **A** Yes.

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09:45:03 1 Q Okay. And so this was typed -- this was searched on
2 August 7th. And then on August 8th, the following day, you and
3 Mr. Bonds and Foreman met in the person; isn't that right?

09:45:16 4 A I don't remember the date.

09:45:17 5 Q Okay. Do you recall this meeting? Do you recall meeting
6 with Mr. Foreman at FCI Beaumont?

09:45:25 7 A In Beaumont?

09:45:26 8 Q Uh-huh, or just ever.

09:45:29 9 A I remember meeting with Nathan Foreman at the Federal
10 Detention Center in downtown Houston.

09:45:35 11 Q Okay. I'm going to show you Exhibit 108-2, beginning at
12 108-2.

09:45:42 13 In this meeting -- and you see it's dated -- these are your
14 notes, correct?

09:45:46 15 A They are.

09:45:47 16 Q Okay. And up at the top, it's dated August 8th, 2001?

09:45:50 17 A Yes.

09:45:51 18 Q So you took the notes on this day, right?

09:45:53 19 A Yes.

09:45:54 20 Q Okay. And this Jesse that Mr. Foreman is referencing in
21 this interview with you is Jesse Moreno, right?

09:46:04 22 A Yes.

09:46:04 23 Q And during this August 8th, 2001, interview with you,
24 Mr. Foreman discusses both the Prible and the Herrero cases,
25 right?

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A He does.

Q Okay. And he discusses various informants -- or various other inmates, himself, Rafael Dominguez, right? You saw that name?

A I did.

Q Okay. And Jesse Moreno, right?

A Among others.

Q Now, Mr. Bonds was at this meeting with you, right?

A Yes.

Q Okay. And what was your take on Mr. Foreman when you met with him?

A I didn't believe him.

Q Why didn't you believe him?

A I didn't believe him.

Q Okay.

A Neither one of us did. We walked out of there saying we didn't believe a word he had to say.

Q Okay. So after you left that meeting or as you were leaving, did you tell Foreman, "Look, I don't believe anything you're saying. Get out of here. Get lost"?

A I didn't tell him what I thought.

Q You didn't? Did you tell him to contact you if he had further information?

A I don't remember saying that.

Q Okay. Would you have wanted him to contact you again with

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1 more information if you knew he was a liar?

09:47:21 2 **A** No.

09:47:22 3 **Q** That would have been improper to use a witness that you knew
4 was lying, right?

09:47:25 5 **A** I never used him as a witness, contrary to what your
6 petition says.

09:47:29 7 **Q** But this was produced from your file by the DA's office in
8 August 2016. And it's a -- there's a phone message on there
9 showing Alan Percely -- Percely, who was Nathan Foreman's
10 attorney. Do you recall Mr. Percely?

09:47:44 11 **A** Now that you mentioned it, yes.

09:47:45 12 **Q** I might be saying his name wrong. Okay.

09:47:47 13 **A** He was as credible as Nathan.

09:47:49 14 **Q** He was as credible as Nathan?

09:47:51 15 **A** Uh-huh.

09:47:51 16 **Q** Okay. And what do you mean by that?

09:47:53 17 **A** Just what I said.

09:47:54 18 **Q** Just a liar?

09:47:54 19 **A** Yep.

09:47:55 20 **Q** Okay. And he called you on August 13th, 2001, about
21 testifying -- about having Nathan testify on the federal trial,
22 right?

09:48:03 23 **A** He might have. I don't remember.

09:48:04 24 **Q** Okay. If -- if, in fact, this -- this phone message shows
25 that, you wouldn't disagree with that, right?

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09:48:13 1 **A** No.

09:48:13 2 **Q** Okay. Did you call Percely back and speak with him?

09:48:18 3 **A** I don't remember.

09:48:18 4 **Q** Okay. At some point, you must have spoken with him if you
5 knew that he was lying, right?

09:48:23 6 **A** Which one?

09:48:24 7 **Q** Percely.

09:48:26 8 **A** To be nice maybe.

09:48:29 9 **Q** Nine days after you speak with Mr. Foreman, the Prible
10 indictments were prepared. That's Exhibit 60.

09:48:39 11 You see the first page of this Exhibit 60, it says date
12 prepared, August 17th, 2001. So after speaking with Foreman,
13 did you believe you had probable cause to present the case to
14 the grand jury for indictment?

09:48:52 15 **A** My decision to decide what to do with the Prible case had no
16 bearing and nothing to do with the conversation I had with
17 Nathan Foreman.

09:49:01 18 **Q** Okay. Why did you suddenly decide to charge Mr. Prible and
19 indict him for capital murder if there was no new evidence since
20 1999 other than this conversation that you had had with
21 Mr. Foreman?

09:49:15 22 **A** One more time, I don't know with what they had in 1999. It
23 could have been completely sufficient in 1999 to move forward,
24 but I didn't have the case then. When I got the case, I wanted
25 to be thorough, which included talking to Nathan Foreman, which

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1 I thought would be a waste of time, and it turned out to be a
2 waste of time.

09:49:32 3 Irrespective of that, I made a decision to move forward on
4 the case against Ronald Jeffrey Prible.

09:49:42 5 Q Okay. Did you disclose to Mr. Prible's defense attorney
6 that you had spoken with Mr. Foreman on August 8th, 2001?

09:49:47 7 A Mr. Prible's attorney, Terry Gaiser?

09:49:50 8 Q Uh-huh.

09:49:55 9 A We talked about Nathan Foreman. I don't know exactly if I
10 told him about that conversation, but we did discuss Nathan
11 Foreman.

09:50:00 12 Q I'm asking you if you told Mr. Gaiser or Mr. Wentz if you --
13 about the substance of your meeting with Mr. Foreman on
14 August 8th, 2001.

09:50:14 15 A I think I did.

09:50:16 16 Q And you would have -- did you show him your notes from that
17 meeting?

09:50:19 18 A They were in the file.

09:50:21 19 Q But he wasn't allowed to see your work product notes, was
20 he?

09:50:24 21 A Those weren't -- that's not work product. My notes were in
22 the file. Notes are notes. They're in the file.

09:50:29 23 Q So should they all be -- all your notes --

09:50:31 24 A Yes.

09:50:31 25 Q -- be viewable?

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A Yes.

Q -- to the defense counsel?

A Yes.

Q Okay. So you're saying that all of your -- any -- any of your notes that were contained in the file would have been disclosed to defense counsel?

A My notes would have been in the open file.

Q Okay. So you didn't take any notes out saying -- claiming work product protection over them before the defense came to review the file?

A Not that I remember, no.

Q Okay. Now, in this case, with all of the evidence that law enforcement had in 1999, which you came you don't recall what -- what evidence that was, but with all that evidence that they had in 1999, the DA must not have believed that there was sufficient legally admissible evidence to convict Prible of the five murders at that time, right?

A I do not agree with that statement.

Q You don't agree with that statement?

A No, ma'am.

Q Even though this was a case of an entire family being murdered, three young children, don't you think the DA's office would have prosecuted that as soon as they had -- they had the evidence needed to do so?

A Not necessarily.

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09:51:36 1 Q In fact, back in 1999, the DA's office didn't even present
2 the case to the Grand Jury, did they?

09:51:47 3 A I don't think they did, no.

09:51:49 4 Q Okay. When did the DA's office finally present this case to
5 the grand jury?

09:51:53 6 A When I did.

09:51:54 7 Q You were the one that presented it?

09:51:56 8 A Yes.

09:51:56 9 Q And do you recall the date that you did so?

09:52:00 10 A August 2001.

09:52:01 11 Q Okay. Do you recall the -- was it after you had met with
12 Mr. Foreman August 8th?

09:52:09 13 A Yes.

09:52:10 14 Q It was after you met with him. Okay.

09:52:12 15 And was there only one Grand Jury that heard this case?

09:52:17 16 A Yes.

09:52:17 17 Q Was that the only one?

09:52:18 18 A Yes.

09:52:19 19 Q Okay. Did you prepare any sort of a witness list for the
20 Grand Jury?

09:52:24 21 A No.

09:52:24 22 Q Did you present any witnesses to the Grand Jury?

09:52:26 23 A No.

09:52:28 24 Q And is that a common practice of yours, to go into a Grand
25 Jury without any witnesses?

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A Yes.

Q Did you testify at the Grand Jury about your conversations with Foreman and Moreno?

A I know I didn't about Foreman.

Q But you spoke with the Grand Jury about your conversation with Moreno?

A Having to do with the Prible case?

Q Yes.

A No.

Q Did you present these two cases, Herrero and Prible, on the same day?

A Yes.

Q In the same -- I mean, was it like back to back? How does -- how does it work when you go into the Grand Jury?

A You go in on your scheduled morning with all the cases that you have and present them, go outside while they vote, see if they have any questions, and then do the next one.

Q Okay. So your -- your testimony is that you spoke with the Grand Jury about Moreno --

A No.

Q -- with respect to the Herrero case?

A I presented the Herrero case, and I presented the Prible case.

Q Okay.

A And maybe others. I don't remember.

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09:53:30 1 Q Okay. And when you presented those two cases to the Grand
2 Jury, did you tell the Grand Jury that there were jailhouse
3 informants in those cases that would testify as to a confession?

09:53:43 4 A Can we divide up the cases and ask the question
5 specifically?

09:53:47 6 Q Sure. With respect to Prible.

09:53:49 7 A Okay.

09:53:49 8 Q Yes. Did you tell the Grand Jury that there was a jailhouse
9 informant that would testify that Prible confessed to the crime?

09:53:57 10 A No.

09:53:58 11 Q With respect to Mr. Herrero, did you tell the Grand Jury
12 that there was a jailhouse informant who would testify that
13 Mr. Herrero confessed to the crime?

09:54:07 14 A Yes.

09:54:09 15 Q Was there a court reporter present at that Grand Jury
16 meeting?

09:54:21 17 A No. Sorry. No.

09:54:23 18 Q You did not request that --

09:54:24 19 A I don't think so, no.

09:54:25 20 Q -- a court reporter be present?

09:54:27 21 A I don't think so, no.

09:54:28 22 Q Was that common practice in the DA's office to -- to not
23 have a court reporter present to transcribe those proceedings?

09:54:34 24 A Correct. You only had a court reporter present if you had a
25 witness you were presenting.

Video Deposition of Kelly Siegler

09:54:37 1 Q Okay. Now, you could have a court reporter present if you
2 weren't having -- presenting a witness, but you just didn't in
3 this case?

09:54:44 4 A I don't think we ever had a court reporter present if we
5 weren't presenting a witness.

09:54:48 6 Q Okay. Let -- sorry. Let me ask you a question so it's
7 easier to follow.

09:54:54 8 Was there anything preventing you from asking a court
9 reporter to be present in a Grand Jury proceeding in which you
10 were not presenting any witnesses?

09:55:02 11 A Yes.

09:55:02 12 Q What was preventing you from doing that?

09:55:05 13 A Grand Jury proceedings are secret, so you don't want a
14 record of what's going on when they vote, when they talk about
15 things. You only have a court reporter present when there's a
16 witness.

09:55:16 17 Q Okay. But -- and I understand the Grand Jury proceedings
18 are secret. There would never be a court reporter present to
19 take down what you were telling the Grand Jury before they went
20 into their secret deliberations?

09:55:34 21 A I don't want to say never, but not that I remember.

09:55:37 22 Q Okay. Was there anything preventing you from having a court
23 reporter take down the testimony, for lack of a better word,
24 the -- the statements that you were making to the Grand Jury
25 about these cases before they went into their private

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1 deliberations?

09:55:56 2 **A** Well, you would have to find the court reporter. They
3 weren't there. They don't stay in the Grand Jury room.

09:56:02 4 **Q** You would have to arrange for a court reporter to be
5 present?

09:56:05 6 **A** Correct.

09:56:05 7 **Q** And those court reporters are -- that transcribe the -- the
8 grand jury proceedings, those worked at the DA's office, right?

09:56:13 9 **A** They worked in the Grand Jury division, yes.

09:56:15 10 **Q** Right. Like Javier Leal, I believe was one?

09:56:19 11 **A** Yes.

09:56:19 12 **Q** Okay. So what you would need to do is make arrangements for
13 one of them to be present when you presented the case if you
14 wanted the testimony -- testimony transcribed?

09:56:28 15 **A** Yes.

09:56:28 16 **Q** Okay. But you did not do that in this case?

09:56:31 17 **A** Which case?

09:56:33 18 **Q** In the Prible case.

09:56:34 19 **A** I did not.

09:56:35 20 **Q** And you did not do that in the Herrero case?

09:56:37 21 **A** I did not.

09:56:39 22 **Q** So there is no record whatsoever as to what you told the
23 Grand Jury when you presented the Prible matter to that Grand
24 Jury?

09:56:50 25 **A** There is not.

Video Deposition of Kelly Siegler

09:56:52 1 Q And there is no record whatsoever regarding what you told
2 the Herrero Grand Jury about Herrero's case in that Grand Jury
3 proceeding?

09:57:02 4 A There is not.

09:57:03 5 Q Now, a prosecutor has a duty to disclose all material
6 defensive facts to the grand jury, correct?

09:57:08 7 A Yes.

09:57:09 8 Q Okay. Did you tell the Grand Jury in the Prible matter that
9 you had spoken to Nathan Foreman about Mr. Prible's case?

09:57:21 10 A No.

09:57:22 11 Q Did you tell the Grand Jury that a jailhouse informant tried
12 to come -- or came to you to try to set up Mr. Prible for this
13 murder before Mr. -- before he had even met Mr. Prible?

09:57:37 14 A I don't understand that question.

09:57:38 15 Q Did you tell the Grand Jury that an inmate, Nathan Foreman,
16 had come to you and tried to set up Mr. Prible, saying that
17 he -- Mr. Prible had confessed to him, but that you had
18 determined that Mr. Foreman was lying about that?

09:57:57 19 A I disagree with the assertion that Nathan -- Nathan Foreman
20 tried to set him up. I agree with the statement I made earlier
21 that I did not believe Nathan Foreman was being credible, and I
22 agree with the statement I said earlier that Nathan Foreman's
23 interview had nothing to do with the evidence that existed
24 against Jeffrey Prible.

09:58:20 25 Q Okay. My question -- I'll restate it.

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1 Did you -- when you were presenting the case against
2 Mr. Prible to the Grand Jury, did you tell the Grand Jury about
3 your meeting and the substance of that meeting with Nathan
4 Foreman?

5 **A** No.

6 **Q** Because first he was charged in July 5th, 2001, as we
7 established, right?

8 **A** Right.

9 **Q** And after that, he was moved from the FCI Beaumont low to
10 FCI Beaumont medium because his points went up, right?

11 **A** I don't know anything about that.

12 **Q** You don't know that he was moved from the low to the medium?

13 **A** I didn't keep up with that. I don't remember when he was
14 moved or why he was moved.

15 **Q** Okay. But you don't disagree that he was moved from the low
16 to the medium after he was charged in this case?

17 **A** I don't know.

18 **Q** Now, Curtis Brown was involved in the Hermelio Herrero case
19 as well, right?

20 **A** Yes.

21 **Q** Okay. And the same informants were involved in the Herrero
22 case as were involved in the Prible case, right?

23 **A** No.

24 **Q** Well, Nathan Foreman was involved in both cases, right?

25 **A** No.

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Q Well --

A You-all say Nathan Foreman was involved in the Prible case.
He was not.

Q He spoke with you about the Prible case, right?

A And he lied. He wasn't involved.

Q And he spoke --

A You want to make him involved. He wasn't involved.

Q And he spoke also with you about the Herrero case, right?

A Yes.

Q And he ended up not testifying again -- with you -- or for
you in that case, right?

A That's right.

Q Okay. But you, nevertheless, wrote him a Rule 35 letter to
his prosecutor, right?

A I did.

Q Okay. Jesse Moreno talked with you about Mr. Prible's case
and Mr. Herrero's case, correct?

A He did.

Q Rafael Dominguez spoke with you about Mr. Herrero's case,
and his name was also listed -- he -- he -- his name came up in
that conversation that you had in August 8th, 2001, with
Mr. Foreman, right?

A With Nathan Foreman. Rafael Dominguez was not involved in
the Prible case.

Q Okay. But he was mentioned in that conversation that you

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were having with Mr. Foreman on August 8th, 2001?

A By Nathan Foreman --

Q Uh-huh.

A -- who was lying.

Q Okay. But --

A So that doesn't make him involved.

Q I understand.

My question is: Rafael Dominguez was mentioned by Nathan Foreman during that conversation you had with him on August 8th, 2001, right?

A That does not make him involved.

Q Okay. Are you going to refuse the answer the question?

A No.

Okay. One more time. Mr. Dominguez's name was mentioned by Nathan Foreman when he met with you on August 8th, 2001, correct?

A It was.

Now, why did you not end up using Mr. Foreman at Herrero's trial?

A I didn't need him. I didn't believe him.

Exhibit 71, that's a letter dated May 5th, 2002, from you to FCI medium, and you're asking the prison to keep Jesse Moreno, Rafael Dominguez, Nathan Foreman and Eddie Gomez safe from Herrero because he's put a hit out on them for testifying in his case, right?

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10:01:31 1 **A** What's your question?

10:01:32 2 **Q** Is that -- that's what it reflects, right?

10:01:36 3 **A** Not exactly.

10:01:38 4 **Q** Okay. Well, will you agree that the letter says what it --
5 says what it says?

10:01:43 6 **A** The letter is a request to try and keep them safe.

10:01:48 7 **Q** Right. And you refer to four witnesses, one of whom is
8 Herrero, right?

10:01:52 9 **A** Yes.

10:01:52 10 **Q** I mean -- I'm sorry. One of whom is Foreman, right?

10:01:55 11 **A** Yes.

10:01:56 12 **Q** Okay. But you just said that he lied and you didn't
13 believe -- you didn't believe him?

10:02:00 14 **A** He didn't testify.

10:02:01 15 **Q** That's not my question. You just said that he lied, and you
16 didn't believe him, right?

10:02:05 17 **A** I just said that Nathan Foreman did not testify in the
18 Hermelio Herrero trial.

10:02:10 19 **Q** And you also found him to be a liar, right?

10:02:13 20 **A** I did not believe him to be credible, no.

10:02:15 21 **Q** And nevertheless, you gave him favors for his assistance in
22 the Herrero case, didn't you?

10:02:20 23 **A** I did not. I wrote him a letter.

10:02:23 24 **Q** Well, you also asked for the prison to keep him safe based
25 on his testimony in that case when he didn't testify, right?

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10:02:29 1 **A** I think I still have an obligation to keep a man from being
2 killed, don't you? Even if I think he's a liar, I can't let him
3 get killed.

10:02:38 4 **Q** Let's look at Exhibit 72. Exhibit 72 is a May 1st, 2002,
5 letter from you to U.S. Attorney Todd Clemons. We -- we
6 mentioned his name earlier. "Moreno told me initially of the
7 possibility of other witnesses to admissions made by Herrero
8 about his committing this murder in 1995. Moreno and the other
9 three witnesses have all been cooperative. It was, however,
10 Moreno who I presented to the jury as being the crux of the
11 case, and it was almost entirely because of his testimony that
12 the jury found Herrero guilty of murder," right? Right?

10:03:20 13 **A** Yes.

10:03:20 14 **Q** Okay. Now, the other three witnesses that you were
15 referring to there were Foreman, Rafael Dominguez, and Eddie
16 Gomez, right?

10:03:29 17 **A** I think so. I don't remember the last one.

10:03:31 18 **Q** Okay. And by the time that you wrote this letter, you had
19 determined that Foreman was not with Moreno at the time Moreno
20 claims he heard this testimony from Mr. -- or this confession
21 from Mr. Herrero, right?

10:03:51 22 **A** I don't remember when I figured that out.

10:03:53 23 **Q** Okay. At some point before Mr. Herrero's trial, you figured
24 that out, right?

10:03:58 25 **A** At some point before Mr. Herrero's trial, I did not believe

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that Nathan Foreman was being completely truthful.

Q But regardless, you wrote this letter to the U.S. attorney for Mr. Moreno saying that all three witnesses, including Foreman, had been cooperative?

A That's correct.

Q And Exhibit 73, even though by the time Mr. Herrero's trial you had found out that Moreno had been lying to you about Foreman being present, and Mr. Foreman had also lied to you on August 8th, 2001, you, nevertheless, wrote a letter to Foreman's U.S. attorney asking for a sentence reduction for his assistance in the Herrero case; is that correct?

A Okay. What was your question?

Q By May 1st, 2002, Herrero's trial was over, right?

A Yes.

Q Prior to his trial, you had determined that -- not only that -- well, first, I'll break it down.

You had determined that Moreno's initial story to you about hearing the confession of Herrero in the presence of Nathan Foreman was false, correct?

A I don't remember that -- making that determination, no.

Q I thought you just were saying that at some point prior to trial, you determined that Mr. Foreman was not present during that confession?

A No. I determined that Mr. Foreman was not being completely credible -- truthful.

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10:05:28 1 Q Did you not -- did you ever determine that Mr. Foreman was
2 not present for the -- for Herrero's supposed confession to
3 Moreno as Moreno had told you he was back in July of 2001?

10:05:41 4 A I don't remember. I didn't go into a break-it-down
5 determination of all the reasons why I thought Nathan Foreman
6 was lying. I just didn't believe him, so I didn't use him.

10:05:52 7 Q Okay. But you, nevertheless, wrote this letter to his U.S.
8 attorney asking for a sentence reduction, right?

10:05:57 9 A Not exactly. That's a lot different letter than the one I
10 wrote for Jesse Moreno.

10:06:01 11 Q Are you disagreeing that this Exhibit 73 is a letter to
12 Nathan Foreman's U.S. attorney asking her to consider his
13 cooperation in the Herrero case?

10:06:13 14 A I agree that I wrote this letter saying that Nathan Foreman
15 was cooperative. I don't say nearly the parts about how
16 truthful he was like I do with Jesse Moreno, and I do not
17 specifically make a request for a downward departure like I do
18 for Jesse Moreno. It's a different letter.

10:06:31 19 Q Okay. And nowhere in this letter do you say, "Ms. Batson I
20 met with -- with Mr. Foreman. I think he's a complete liar"?

10:06:38 21 A I do not say that.

10:06:39 22 Q You do not say that?

10:06:40 23 A No.

10:06:40 24 Q And nothing was requiring you to write this letter, right?
25 You didn't have to write this letter to Ms. Batson, right?

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10:06:47 1 **A** I did not.

10:06:48 2 **Q** You chose to do that on Mr. Foreman's behalf?

10:06:50 3 **A** I chose to write the letter.

10:07:06 4 **Q** Now, Hermelio Herrero was convicted of murder in April 2002,
5 and he was sentenced to life in prison, right?

10:07:12 6 **A** Yes.

10:07:13 7 **Q** And Moreno and Dominguez testified him -- against him at
8 that trial, correct?

10:07:18 9 **A** Yes.

10:07:20 10 **Q** Okay. Exhibit 125 is an undated letter from Jesse Moreno to
11 you telling you exactly what to say to U.S. Attorney Clemons to
12 get him transferred to another prison and to have his sentence
13 reduced, right?

10:07:36 14 **A** I don't know what this is.

10:07:37 15 **Q** Okay. Have you never seen it before? It was found in your
16 file.

10:07:40 17 **A** I'm trying recognize it. I don't remember seeing this.

10:07:46 18 **Q** You've never seen it?

10:07:47 19 **A** I'm not denying that it was in the file that you got from
20 Brian Rose, but I don't remember seeing this.

10:07:56 21 **Q** Were you, in fact, able to persuade the unit team to
22 transfer Moreno to the prison to keep him safe like we discussed
23 earlier?

10:08:08 24 **A** I don't know -- when are we talking about?

10:08:11 25 **Q** Well, did you -- did you contact BOP in Beaumont and inform

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1 them that Moreno and these other witnesses -- these other three
2 witnesses had testified -- or had cooperated in your case
3 against Herrero and he needed to keep him safe?

10:08:27 4 **A** I don't know what this says. I didn't read the whole thing.
5 Is that what this is?

10:08:31 6 **Q** No, I'm asking you after you got -- after you received
7 this --

10:08:34 8 **A** Are we done with this? I don't know if I received this. I
9 do not recognize this.

10:08:38 10 **Q** Okay. Were you able to persuade the unit team in BOP, the
11 FCI Beaumont team to move Moreno and these other three witnesses
12 to another area of the prison where they would be kept safe?

10:08:55 13 **A** I don't remember. I hope so.

10:08:57 14 **Q** Okay. So that's something that you might have been able to
15 do is all I'm -- is all I'm asking?

10:09:04 16 **A** All I can do is make the request.

10:09:07 17 **Q** Okay.

10:09:07 18 **A** The federal prisons do what the federal prisons do.

10:09:10 19 **Q** Okay. Exhibit 123 was also produced from your file by the
20 DA's office, and it is a witness voucher for your testimony in
21 an August 22nd, 2002, sentence reduction hearing for Jesse
22 Moreno. Do you recognize this document?

10:09:29 23 **A** I do.

10:09:30 24 **Q** Okay. You filled it out, correct?

10:09:34 25 **A** I didn't fill this out.

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10:09:35 1 Q You didn't fill it out?

10:09:37 2 A No.

10:09:37 3 Q Okay. Well, you -- you must have told someone how to fill
4 it out so you could sign it and get reimbursed?

10:09:46 5 A I don't know how it got filled out. It says signed by the
6 assistant U.S. attorney.

10:09:50 7 Q Okay. But you recall seeing this document? You recall
8 making this -- submitting this fact witness voucher?

10:09:56 9 A I remember seeing this.

10:09:57 10 Q Okay. Now, this was never produced to Mr. Prible's defense
11 team, was it?

10:10:06 12 A Why would it be?

10:10:06 13 Q I'm just asking you if it was ever produced to Mr. Prible's
14 defense team?

10:10:11 15 A This piece of paper having to do with Jesse Moreno, you're
16 asking me why I didn't produce this to Jeffrey Prible's defense
17 team?

10:10:22 18 Q I'm asking if you did produce it to their defense team.

10:10:25 19 A No.

10:10:26 20 Q Okay. Now, the hearing for Mr. Moreno that this references
21 was in Lafayette, Louisiana, right?

10:10:36 22 A I was instructed that that hearing was confidential and that
23 I was never to talk about it or of it to anyone, by a federal
24 judge.

10:10:47 25 Q Ms. Siegler --

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(Video paused.)

MS. SCARDINO: Your Honor, at this point I want to pause because we went off the record and agreed to have the questions about that hearing sealed. And I would like for you to see that. It's not on video, but I would like to -- for -- to read that into the record or however you would like to --

THE COURT: It's still sealed?

MS. SCARDINO: It's -- yes. It's sealed by agreement. We agreed to have it sealed so we could question her about it -- about the...

THE COURT: Are you going to read it in the open courtroom, then?

MS. SCARDINO: Sure.

THE COURT: I'm -- that will destroy the seal, I mean.

MS. MIRANDA: And I understood that was -- that was what was subject to the protective order.

MS. SCARDINO: Well, my understanding is the protective order was the actual transcript of that August 22nd, 2002, hearing, and that -- but the questions about it were not pursuant to that protective order that was entered into with the U.S. Attorney's Office.

MS. MIRANDA: Our preference would be not to do it in open court. I mean, that's cutting it kind of close.

THE COURT: Why don't you let me read it.

MS. SCARDINO: Okay. That's fine, Your Honor.

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THE COURT: You can give it to me.

MS. SCARDINO: Okay. So should we continue?

THE COURT: Let's continue.

(Video deposition of Kelly Siegler continued as follows.)

Q Okay. So earlier we were talking about the open file policy that you said the DA's office had during this time period that Mr. Prible was prosecuted, and in that -- when a defense attorney came in to view the file, would they be able to take notes of what they were reading?

A Yes.

Q But they would not be able to make copies of the documents in the file; is that right?

A Correct.

Q And you testified that you had no work product file that you kept as such, correct?

A Not per se, not necessarily, no.

Q Okay. And that is because all of your work product would have been reviewable by the defense, right?

A I'm trying to think of what work product might have come up in Prible early on. I can't think of what it would have been.

Q Okay.

A But my notes I wouldn't have considered work product.

Q Okay. All notes -- any notes that you took working on this case would have been available to defense attorneys to see; is that right?

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10:12:54 1 **A** Yes.

10:12:55 2 **Q** Okay. And how do you define work product? What's your
3 understanding of that definition?

10:13:11 4 The legal definition of work product.

10:13:17 5 **A** We tried to keep most things not work product just because
6 it was simpler.

10:13:22 7 **Q** Okay. Do you understand -- do you know what the term "work
8 product" -- how it's defined under the law?

10:13:27 9 **A** Tell me.

10:13:28 10 **Q** No, I'm asking you if you -- if you know.

10:13:30 11 **A** No, I don't know the criminal definition of it.

10:13:33 12 **Q** Okay. There were other nontestifying informants that were
13 involved in the Prible case; isn't that right?

10:13:41 14 **A** I remember Michael Beckcom, but Michael Beckcom testified.

10:13:46 15 **Q** Okay. Do you remember discussing Mr. Prible's case with
16 other inmates other than Mr. Foreman and Mr. Beckcom in FCI
17 Beaumont?

10:13:56 18 **A** I don't remember. I could have, but I'm not sure if I did
19 there or where or who it would have been.

10:14:01 20 **Q** Okay. I'm going to show you Exhibit 112. And you see on
21 the last page of this Exhibit 112 it says the letter was
22 received by you on May 22nd, 2002? Do you see that?

10:14:16 23 **A** Just a second.

10:14:17 24 **Q** Okay. And this letter to you is from Jesse Gonzalez and
25 Felix Gonzalez. Do you see that at the top?

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10:14:25 1 **A** I do.

10:14:26 2 **Q** Okay. Do you remember Mr. and Mrs. -- or Mr. Jesse Gonzalez
3 and Felix Gonzalez?

10:14:30 4 **A** I never met them.

10:14:31 5 **Q** Okay. Do you recall that they were -- I'm just asking you
6 if you -- if you remember them. Do you remember them?

10:14:36 7 **A** I never met them. I remember getting this letter.

10:14:39 8 **Q** Okay. Do you remember that they're a father/son duo that's
9 incarcerated together in FCI Beaumont?

10:14:45 10 **A** Only from this letter.

10:14:46 11 **Q** Okay. But you did -- you remember receiving this letter in
12 May 2002?

10:14:50 13 **A** Yes.

10:14:50 14 **Q** Okay. And in this letter, Mr. Gonzalez said that he and his
15 father have spoken to you twice on the phone about the Prible
16 case, right?

10:15:00 17 **A** That's what he says.

10:15:02 18 **Q** Okay. And he -- do you recall speaking to him on the phone
19 about the Prible case?

10:15:05 20 **A** I do not.

10:15:06 21 **Q** Do you -- do you just not remember or did you not -- let me
22 ask that question more clearly.

10:15:11 23 Did you ever speak on the telephone with the Gonzalezes
24 about Mr. Prible's case?

10:15:17 25 **A** Not that I remember, no.

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10:15:18 1 Q Not that you recall, no?

10:15:20 2 Okay. And you notice in this letter that the word Prible
3 is misspelled? Do you see that?

10:15:26 4 A I do.

10:15:26 5 Q With two Bs instead of one?

10:15:28 6 A Correct.

10:15:29 7 Q Okay. And Mr. Gonzalez, in this letter, also mentions a
8 newspaper article that he had recently seen about the case while
9 he was in prison, right?

10:15:37 10 A He does.

10:15:38 11 Q Okay. Now, was it your practice with informants, if someone
12 reached out to you with information about a case and you spoke
13 with them on the phone, to ask them to write you a letter
14 detailing what they knew about the case?

10:15:56 15 A No.

10:15:57 16 Q That wasn't a practice that you had?

10:15:59 17 A No.

10:15:59 18 Q Did you ever ask any informant to put down what they knew in
19 writing and send it to you?

10:16:04 20 A I did not.

10:16:05 21 Q Did you ever tell potential informants to take a prison
22 photograph with the defendant that they were working to testify
23 against?

10:16:17 24 A I saw that in your petition where you said I did that. That
25 is a lie.

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Q I'm just asking you. So you deny that you ever did that?

A I did not.

Q Okay. But you were aware of such informant photos, correct?

A I saw the picture.

Q Okay. When was the first time you saw that informant photo?

A I don't know if I first saw it at Beaumont or when -- when Beckcom got back to Harris County right before the trial.

Q But you saw the photos prior to the trial of this case?

A Yes.

Q Okay. And they were shown to you by Beckcom?

A I think it was Beckcom.

Q Now, parts of this letter from Mr. Gonzalez don't make sense, right?

A They do not.

Q Okay. And what was your take on this letter when you received it?

A Mr. Gonzalez was trying to glom on and put himself in the middle of a case to try and get himself a deal, like every other inmate in federal prison.

Q Okay. And did you believe his story from this letter, that he had heard Mr. Prible confess?

A I did not believe his story for lots of reasons.

Q Also, if you notice in this photo -- in this Exhibit 112, Mr. Gonzalez says that he knew about Jeff and Jeff's case before Jeff even got to the medium from the low. Did you see that?

Video Deposition of Kelly Siegler

10:17:35 1 **A** I did see that.

10:17:36 2 **Q** Okay. How might an inmate know that another inmate is going
3 to be transferred to their unit of the prison?

10:17:43 4 **A** I have no idea. I didn't believe what this letter had to
5 say.

10:17:47 6 **Q** And is that why you decided not to have Mr. Gonzalez testify
7 against Prible in this case, because you determined that he was
8 not credible?

10:17:55 9 **A** Correct.

10:17:55 10 **Q** Okay. Did you ever show Mr. Gaiser or Mr. Wentz this letter
11 from Mr. Gonzalez?

10:18:04 12 **A** It would have been in the file.

10:18:05 13 **Q** Okay. So your -- your testimony is yes, you did show it to
14 them?

10:18:07 15 **A** I don't know if they looked at it or not. It would have
16 been in the file.

10:18:10 17 **Q** It would have been in the file that you gave them to review
18 when they came into your office to review the file?

10:18:15 19 **A** Correct.

10:18:16 20 **Q** And do you have any written record of what was in that file
21 that you gave them to review?

10:18:22 22 **A** No.

10:18:23 23 **Q** Okay. You never made any notes about specifics?

10:18:26 24 **A** The file was an open file. I've known Terry Gaiser for
25 years. Any time he wanted to read the file, he could come. I

Video Deposition of Kelly Siegler

1 would even bring it to court for him to read during docket call.

2 "Here it is, Terry. Knock -- knock yourself out."

10:18:40 3 Q Now, Exhibit 113 -- Exhibit 113 is a letter from Carl

4 Walker, another inmate in FCI Beaumont, to you about

5 Mr. Prible's case. Do you recognize this letter?

10:18:56 6 A I do, but this is the only letter I noticed you-all talked

7 about in your petition where you don't have the envelope

8 attached with the date. I'd like to see the date, please.

10:19:05 9 Q Well, I'd like to see it also, but it wasn't produced to us

10 from your file.

10:19:09 11 A That's odd.

10:19:09 12 Q Do you think it should be in your file somewhere?

10:19:12 13 A You should ask him that.

10:19:13 14 Q Well, I'm asking you because you know what's in the file.

15 Would you have kept that --

10:19:19 16 A Yes.

10:19:19 17 Q -- in your file?

10:19:20 18 A Yes.

10:19:21 19 Q Okay. So -- and it would be -- and in your mind, we should

20 be able to review the entire file, right, that you had in this

21 case?

10:19:27 22 A No, I just want to know where the envelope is because you

23 attached the rest of the envelopes.

10:19:32 24 Q Right. I've attached everything that was given -- I'll

25 represent to you that was produced to us by the DA's office.

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So you've seen this letter before. Do you recognize it?

A Okay.

Q Okay. Now, why did you not use Carl Walker to testify against Mr. Prible?

A I didn't believe him.

Q Okay. Did you ever speak with him on the phone?

A I don't even remember the name of Carl Walker. Unlike the other inmates whose names I do recognize, I don't remember Carl Walker's name.

And I also notice in this letter that he talks as if Prible had already been indicted, unlike the others, which, again, makes me wonder where is the envelope that went with this letter.

Q And I would very much like to see that envelope also, I would represent to you. So --

Okay. So you chose -- you decided not to use Mr. Walker because you thought he was not credible?

A Based on what he's saying here --

Q What he's saying here?

A -- it doesn't make sense.

Q Okay. But you're saying that you showed this letter to Mr. Prible's defense team?

A I'm saying it was in the file.

Q So you can't say for certain that you showed this letter to Mr. Prible's defense team?

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10:20:36 1 **A** I don't know what they read. The file was open for them to
2 read whatever they wanted.

10:20:40 3 **Q** Okay. Let's look at Exhibit 114.

10:20:43 4 Exhibit 114 is a letter from Mark Martinez, another inmate
5 at FCI Beaumont, to you. And if you look on the third page,
6 there's an envelope that's dated April 30th, 2002. Do you see
7 that?

10:21:00 8 **A** Just one second.

10:21:01 9 **Q** Okay.

10:21:03 10 **A** Okay.

10:21:04 11 **Q** Okay. Now, why didn't you use Mr. Martinez in your case
12 against Mr. Prible?

10:21:09 13 **A** Because it's pretty obvious that he's just trying to jump on
14 the bandwagon of all -- what all they're all saying to each
15 other out there. He's trying to say whatever he can to act like
16 he knows something he doesn't know for a time cut, like every
17 other inmate in federal prison.

10:21:22 18 **Q** Okay.

10:21:22 19 **A** I didn't believe him, either.

10:21:24 20 **Q** And you -- and when you say talking about things --

10:21:27 21 **A** That's what he said.

10:21:29 22 **Q** Right.

10:21:29 23 **A** They were all talking about it.

10:21:31 24 **Q** Okay. So he said that all -- and you got this -- you
25 received this letter from him about four months before

Video Deposition of Kelly Siegler

1 Mr. Prible's trial -- six months -- about six months before

2 Mr. Prible's trial?

10:21:41 3 **A** Yes.

10:21:41 4 **Q** Okay. So it looks like you had several inmates at FCI

5 Beaumont auditioning for this role of informant against

6 Mr. Prible, right?

10:21:50 7 **A** Federal inmates audition for any role they have on any case

8 they can think of with any information they might hear to try

9 and get a time cut. That's what federal inmates do all day

10 long, 24 hours a day, every day of the year.

10:22:02 11 **Q** Yeah. So you knew that they were doing this before

12 Mr. Prible's trial, right?

10:22:06 13 **A** I'm not stupid.

10:22:08 14 **Q** Okay. But your testimony is that you gave each of these

15 informant letters to Mr. Defense -- or Mr. Prible's defense

16 counsel prior to his trial, right?

10:22:19 17 **A** My testimony is these letters were in the file.

10:22:23 18 **Q** Okay. So you can't say for sure whether you gave these to

19 Mr. Gaiser and Mr. Wentz?

10:22:28 20 **A** I don't know what he read. I didn't babysit his note taking

21 and what he pulled out of the file to read.

10:22:34 22 **Q** Did it ever occur to you that these Exhibits 112 through

23 114, those informant letters, could have been typed up by the

24 same person?

10:22:49 25 **A** They might have been. I don't know. I think the similarity

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1 is the typewriter.

10:22:54 2 Q Okay. Did it raise a red flag to you when you received
3 these letters that they all looked the same?

10:22:59 4 A Yes.

10:23:00 5 Q Okay. And did -- and that red flag to you was that they
6 could have been typed up by the same person?

10:23:06 7 A I don't know if I thought that.

10:23:08 8 Q And it was obvious that these guys were talking about this
9 case on the yard together?

10:23:14 10 A Jesse Gonzalez, Felix Gonzalez, Carl Walker and Mark
11 Martinez, yes.

10:23:18 12 Q Okay. But it wasn't obvious to you that they were speaking
13 about this case with Mr. Beckcom even though he had --

10:23:23 14 A Not based on this letter. It has nothing to do with Prible.

10:23:27 15 Q I'll show you Exhibit 176. It's an affidavit you filed in
16 the state habeas hearing, Hermelio Herrero's habeas proceeding.
17 And you signed that affidavit on March 22nd, 2016; is that
18 correct?

10:23:45 19 A Okay.

10:23:47 20 Q Nowhere in that affidavit do you say that you traveled to
21 Louisiana and testified in Mr. Moreno's Rule 35 hearing, does
22 it?

10:24:01 23 A Why would it?

10:24:02 24 Q I'm just asking you if it does. Does that appear anywhere
25 in there?

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10:24:06 1 **A** It does not.

10:24:10 2 **Q** Now, moving on, there was a criminal history report for
3 Nathan Foreman that we talked about earlier. Does the
4 defense -- they don't have equal access to those reports,
5 correct?

10:24:22 6 **A** They do.

10:24:22 7 **Q** They do?

10:24:22 8 **A** Yes.

10:24:24 9 **Q** How does a defense attorney go about running a criminal --

10:24:26 10 **A** An offense --

10:24:26 11 **Q** -- or a criminal history report?

10:24:29 12 **A** He opens the DA's file and looks at the criminal history.

10:24:31 13 **Q** Okay. I understand that. Is there any way that the defense
14 attorney would be able to see that criminal history report if he
15 wasn't looking at it in a file at the DA's office?

10:24:43 16 **A** Hire a private investigator and they get the criminal
17 history for them.

10:24:48 18 **Q** Okay. What was your policy regarding giving criminal
19 history printouts that you had printed for witnesses and for
20 alternate suspect? What was your policy about giving those over
21 to the defense?

10:25:03 22 **A** We gave them over to the defense.

10:25:05 23 **Q** You gave all of the ones that you had run for all witnesses,
24 you gave them to the defense?

10:25:11 25 **A** What do you mean "all"? We're talking about which case?

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10:25:14 1 Q In -- in Mr. Prible's case.

10:25:17 2 A Can you rephrase the question?

10:25:21 3 Q Sure. Let's see. You -- let's see. I can show you each of
4 these, if you'd like -- if you feel like you need to see them,
5 or I can just tell you the names.

10:25:34 6 A I gave the defense the criminal histories of every witness
7 that testified in the Prible case.

10:25:39 8 Q Okay. If a witness did not testify, you didn't give them
9 that criminal history, right?

10:25:44 10 A Who are we calling a witness?

10:25:52 11 I don't call Nathan Foreman a witness.

10:25:53 12 Q You don't call him a witness?

10:25:55 13 A Not in the Prible case.

10:25:56 14 Q Okay. Was he a witness for you in the Herrero case?

10:25:58 15 A He tried to be.

10:25:59 16 Q Okay. Now, he had knowledge about Prible's case, right?

10:26:03 17 A He was lying.

10:26:04 18 Q Okay. But he was connected to Prible's case because he came
19 to speak with you about it, correct?

10:26:08 20 A He's still lying.

10:26:09 21 Q Okay. So you did not -- okay. So you didn't give a
22 criminal history report for Nathan Foreman to the defense to
23 Prible's case?

10:26:16 24 A He wasn't a witness.

10:26:17 25 Q Okay. Did you give Exhibit 87 --

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THE COURT: Please look for a place where we can
pause, okay?

BY MS. SCARDINO:

Q This is a criminal history report --

(Video paused.)

MS. SCARDINO: We can pause right there.

THE COURT: We'll take a ten-minute break.

(Recess taken from 10:26 a.m. to 10:45 a.m.)

THE COURT: Thank you. Please be seated. That's all
right.

Okay. Why don't we resume the depo.

MS. SCARDINO: Thank you, Your Honor. We're about
half-way finished.

THE COURT: We're half-way finished?

MS. SCARDINO: Oh, and we wondered if we might be able
to break for lunch after this and have Mr. Gaiser's testimony
start at 1:00.

THE COURT: That's fine.

MS. SCARDINO: Would that be okay?

Okay. Thank you.

Are you ready?

THE COURT: I'm ready.

(Video deposition of Kelly Siegler continued as follows.)

Q -- FCI Beaumont inmate named Jonathan Jefferson that was
found in your file. Mr. Jefferson did not testify in

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1 Mr. Prible's case. Did you give this Exhibit 87 to defense
2 counsel?

10:46:19 3 **A** I don't know who Jonathan Jefferson is, and I don't know
4 what Terry Gaiser chose to take notes from in the file.

10:46:26 5 **Q** Okay. But you just said that you only gave the criminal
6 history reports for testifying witnesses, right?

10:46:31 7 **A** I said that I know for sure I gave them criminal history
8 reports for testifying witnesses. There could have been other
9 ones in the file that Terry might have looked at. I don't know
10 what he took notes from.

10:46:41 11 **Q** You don't have -- you don't have any independent
12 recollection of giving him this criminal history report of
13 Jonathan Jefferson, do you?

10:46:50 14 **A** I do not.

10:46:53 15 **Q** Exhibit 86 is a criminal history report for a man named
16 James Martin. Again, he did not testify in Mr. Prible's case,
17 so you would not have given this exhibit to Mr. Prible's defense
18 counsel, correct?

10:47:20 19 **A** I don't know who James Martin is.

10:47:21 20 **Q** Was he an alternate suspect in this case?

10:47:23 21 **A** I have no idea who he is.

10:47:25 22 **Q** I'm going to show you Exhibit 106. It's part of that
23 criminal history report with Mr. Martin with some notes down at
24 the bottom.

10:47:37 25 Is that your handwriting?

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10:47:38 1 **A** It is.

10:47:39 2 **Q** The bottom is your handwriting. Okay. And if you could
3 read that handwriting into the record, your handwriting.

10:47:45 4 **A** "Nothing has ever happened between this witness and
5 defendant per Martin 9/10/02."

10:47:54 6 "Knew nothing regarding complainant and defendant's
7 activities and no recall day of money in the bag."

10:48:09 8 **Q** So from these notes, it looks like you reached out to this
9 James -- James Martin to follow up on a statement that someone
10 had given you in this case?

10:48:20 11 **A** I wouldn't say reached out. I would say I talked to him,
12 whether it was on the phone or in person. These are my notes
13 talking about that conversation.

10:48:28 14 **Q** Okay. I'm going to show you Exhibit 43. This is a
15 statement of Jaime Diane Lyons given on April 29th, 1999. And
16 if you go to the second page, the first paragraph, it says, "I
17 don't know of any enemies that Steve might have. The only
18 friends of his that I met were James Martin, lives in Woodgate
19 Subdivision on Lemonwood, and a white guy who I've since learned
20 to be Jeff Prible. About seven months ago, Steve, Crystal and I
21 were at James' house on Lemonwood when Jeff came over with a
22 baby shower bag full of money. The whole bag was full of cash."
23 Do you see that?

10:49:20 24 **A** I do.

10:49:21 25 **Q** Okay. Did you contact Mr. Martin in order to check out

Video Deposition of Kelly Siegler

1 whether Jaime Lyons' story was correct?

10:49:34 2 **A** I don't remember, but that would make sense.

10:49:36 3 **Q** Okay. And he -- and from looking at your notes, it looked
4 like he gave you a different story than Ms. Lyons gave in her
5 statement; is that right?

10:49:46 6 **A** It looks like he told me he didn't remember anything about
7 this baby bag full of money.

10:49:51 8 **Q** That's right. And these notes of yours were never
9 presented -- or disclosed to Mr. Prible's attorney before his
10 rile, were they?

10:50:00 11 **A** About Jaime Lyons and the baby bag full of money?

10:50:04 12 **Q** No. Your notes on Exhibit 106 about your conversation with
13 this witness, James Martin.

10:50:14 14 **A** I don't know if they were or not. This statement was in the
15 file of Jaime Lyons. The name of James Martin was in her
16 statement for Terry Gaiser to follow through with himself. I
17 don't know if Terry Gaiser took notes from this or not, No. 106.

10:50:31 18 **Q** In order to fulfill your Brady obligations as a prosecutor,
19 do you believe it was sufficient to simply give the name of a
20 witness to defense counsel without giving the context of what
21 that particular witness had spoken to you about?

10:50:48 22 **A** That's not what I said.

10:50:49 23 **Q** I'm asking you --

10:50:50 24 **A** I do not.

10:50:50 25 **Q** -- if that's your belief? You do not?

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A Not if I have exculpatory information, no.

Q Okay. You're required to give --

A The exculpatory information.

Q -- the substance of that exculpatory information? Okay.

But I believe you said that you gave the name of James Martin to Terry Gaiser, and it was up to him to follow through on this?

A I didn't say that.

Q That's not your -- your testimony?

A No. That's not what I said. I said this statement was in the file. The name of James Martin was in the statement, and these notes specifically were also in the file. Whether Terry Gaiser read it or not, I don't know. I don't know what Terry Gaiser read.

Q The office manual had guidelines regarding the use of informants, correct?

A I don't remember what all it had. It was -- it was this thick (indicating).

Q Right. It was very thorough --

A Yes.

Q -- would you say?

A Yes.

Q And the reason it would have had guidelines about the use of informants is because as -- as we've just discussed, prison inmates are notoriously unreliable, right?

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A They lie.

Q They lie. Everyone in jail wants a time cut?

A Yes.

Q Everyone wants out?

A Yes.

Q Okay. And so the office needed to have guidelines regarding the vetting and the usage of informants and the benefits that were exchanged with informants for the purpose of transparency, right?

A I didn't write the guideline. I don't know what their thinks was. This -- the -- the Harris County DA's office guidelines were written way before I got there.

Q Okay. But you were familiar with these guidelines as a prosecutor, right?

A Yes.

Q Okay. So if you look at page 15 of this exhibit, it contemplates two situations when informants might be used, right? And one such circumstance was where the defendant had a case pending, and he and his attorney decided -- or sought to have him become an informant to work off the case. Do you see that?

A I do.

Q And if the trial bureau prosecutor had no objections to that arrangement, it would be referred to the Special Crimes Bureau for approval. The Special Crimes prosecutor enters into a

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1 contract with the defendant and his attorney and notifies the
2 trial prosecutor when the contract is completed or not
3 completed. Do you see that?

10:53:02 4 **A** I do.

10:53:03 5 **Q** Okay. And the second situation in -- in which informants
6 might be used was where the defendant had a case pending, again,
7 and a police officer who has used the defendant as an informant
8 in the past requests special consideration in the form of a
9 lenient sentence. And in that case, the trial bureau prosecutor
10 would make the determination of whether such consideration ought
11 to be given and then must follow -- and it lists a procedure.
12 Do you see that --

10:53:33 13 **A** I do.

10:53:33 14 **Q** -- that must be followed?

10:53:34 15 **A** I do.

10:53:35 16 **Q** Okay. Now -- so the DA manual contemplates two situations
17 when informants might be used, right?

10:53:41 18 **A** No.

10:53:42 19 **Q** And --

10:53:43 20 **A** These are two specific unique situations working off a
21 contract --

10:53:47 22 **Q** Uh-huh.

10:53:48 23 **A** -- and when a cop wants to work his own informant completely
24 separate than what we've been talking about all day.

10:53:54 25 **Q** And -- and that -- that was my next question. Neither of

Video Deposition of Kelly Siegler

1 these situations applied to this case, right?

10:53:58 2 **A** Correct.

10:53:59 3 **Q** Okay. If the second situation would have applied, the
4 guidelines required several people to sign off on the use of an
5 informant, right?

10:54:07 6 **A** It's a whole different situation.

10:54:09 7 **Q** Okay.

10:54:10 8 **A** It's not anything like using an informant as a witness in
9 another case.

10:54:15 10 **Q** Let's look at the section -- Section 2. It said, if that
11 section would have applied, "The requesting officer must produce
12 his request in writing with approval of a supervisor of the
13 grade of lieutenant or above attached thereto. The chief of
14 Special Crimes or one of the members of the organized crime
15 division must be notified to determine if the informant has
16 good, bad or no past history with regards to information
17 furnished. Both the chief prosecutor in the trial court and the
18 first ADA must approve such special consideration in writing,
19 which shall become part of the file.

10:54:49 20 "Additionally, Special Crimes shall log the special
21 consideration information in a well-bound book kept for such
22 purposes. It is the trial bureau prosecutor's responsibility to
23 ensure that such information is communicated to Special Crimes."
24 Do you see that?

10:55:04 25 **A** I do.

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10:55:05 1 Q So in these two -- in these two situations in which the use
2 of informants might be contemplated, no fewer than, I believe,
3 six people had to sign off -- or five people had to sign off on
4 the use of that informant; is that right?

10:55:23 5 A No. Do you want me to explain?

10:55:27 6 Q No. I'm asking you in -- if what I just read, if the second
7 situation would have applied, the guidelines required several
8 people to sign off on the use of that informant, right?

10:55:36 9 A It's the working off of contracts that's the issue here, not
10 the use of the informant. We didn't want cops taking -- taking
11 it upon themselves to work off dope cases or to work their
12 informants in a cop's unilateral decision, a narc on the street
13 making that call without going through us. It's the working off
14 of the contract that's at issue here, not the use of the
15 informant, necessarily.

10:55:58 16 Q Okay. So if you were dealing with an -- an informant who
17 was just trying to work off a drug case, like a narc case --

10:56:07 18 A This is --

10:56:07 19 Q -- then this would have applied?

10:56:09 20 A This is to put an informant on the streets to work off a
21 case a cop has on him by trying to sell more dope, by hooking
22 him up with a bigger guy up the chain. The goal was to get the
23 bigger guy up the chain, and our reason for this rule was to
24 stop the cops from doing it out there willy-nilly without us
25 knowing what was going on and making these deals.

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10:56:27 1 Q Okay.

10:56:27 2 A Nothing to do with simply testifying as a snitch in a case.

10:56:31 3 Q Okay. And if -- and my question to you is if you did have a
4 narc case like you just described, no less than five people
5 would have had to sign off on that, right, according to this?

10:56:42 6 A There were -- there were a lot. I was the boss of Special
7 Crimes. There was a lot.

10:56:46 8 Q Okay. And that was my next question. Were you Special
9 Crimes -- you -- at this point, you were in Special Crimes. So
10 you would have had to have been one of the people that signed off on
11 the use of the informant for that working off a contract type
12 case?

10:56:57 13 A The contract.

10:56:58 14 Q Is that correct?

10:56:59 15 A We didn't want -- we didn't want a cop working off 20 kilos
16 of cocaine by having some street guy going and buying some
17 marijuana and saying, "Oh, we're all good. Special Crimes, let
18 his case go." It's the contract that was the problem. We
19 wanted to know every deal going on with drug cases with
20 contracts. We wanted to be aware of it.

10:57:15 21 Q Uh-huh. And the reason it was so important in that case to
22 have so many people sign off on the use of an informant was so
23 they could vet that informant's credibility, right?

10:57:24 24 A It was really to watch the cops, to be honest with you.

10:57:27 25 Q Okay.

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10:57:27 1 **A** We didn't want cops deciding all by themselves who they were
2 going to work off. We wanted to decide.

10:57:32 3 **Q** Okay. So the reason it was important was transparency. You
4 didn't want the cop to be able to do something that you-all were
5 unaware of, right?

10:57:38 6 **A** Well, we -- we didn't like the whole concept of working off
7 dope cases -- of working off dope cases that way anyway, but
8 this was to watch the cops.

10:57:45 9 **Q** Okay. Now, it refers -- the passage I read earlier refers
10 to a well-bound book. What is that book, and where can I find
11 it?

10:57:53 12 **A** It wasn't really a well-bound book. When I was involved
13 with this, it was like a folder passed down forever with
14 contracts in it. And the whole time I was in Special Crimes, I
15 don't know if I ever even saw a contract. That's how rare they
16 were because we didn't like them.

10:58:10 17 **Q** So when you used an informant in another context to testify
18 in a case against you, you wouldn't enter into a contract with
19 that informant?

10:58:17 20 **A** Like this?

10:58:18 21 **Q** No, just -- I'm just asking would you enter into a written
22 contract with that informant?

10:58:24 23 **A** Not under circumstances like the Herrero or Prible case, no.

10:58:28 24 **Q** What about other circumstances? Would you ever enter into a
25 contract with an informant?

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1 **A** On immunity agreements, which were as rare as contracts, it
2 was written down.

3 **Q** Okay. Nothing was stopping you from putting the agreement
4 that you had with an informant into the form of a written
5 contract, right?

6 **A** It was pretty transparent because I told the jury what the
7 deal was.

8 **Q** There was no one at the DA's office that said, "You can't
9 put your deal with an informant in writing," right?

10 **A** We didn't need to. We told the jury.

11 **Q** Okay. There was no one at the DA's office that said, "You
12 can't put a deal with an informant in writing," was there?

13 **A** There was no rule that said I couldn't do that. There was
14 also no defense lawyer who ever required me to do that.

15 **Q** So you -- at least with these smaller cases, these smaller
16 drug cases that were contemplated in this section that I just
17 read to you, you were the person that would have had to approve
18 the use of those informants in writing, right?

19 **A** Well, it depends on where I was in Special Crimes at the
20 time and where I was in the chain. The whole time I was in
21 Special Crimes, I wasn't the ultimate signer off. It would have
22 been my supervisor or boss, wherever I was in that time.

23 And you said "smaller drug cases." These were the big drug
24 cases. That's why they were rare.

25 **Q** I'm sorry. I'm comparing them to a capital murder case.

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1 You have a drug case versus a capital murder case, right?

10:59:52 2 **A** People get killed in those drug cases. That's why we didn't
3 like the street deals.

10:59:56 4 **Q** Okay. Okay. But in a -- in a drug case in which a
5 defendant was trying to, quote, work off a contract, you
6 required -- the DA's office required that informant deal to be
7 in writing, right?

11:00:10 8 **A** Yes.

11:00:11 9 **Q** But in the case of if you're using an already convicted
10 capital murderer in a federal prison to testify against another
11 one of your capital murder defendants in a state case, there
12 needed to be no writing memorializing that at all?

11:00:32 13 **A** It essentially was in writing.

11:00:33 14 The defense lawyer understood what was happening who
15 represented that inmate, slash, witness. It was told to the
16 jury. It was told in opening statement. It was told on direct
17 examination. It was told on cross-examination. And it was told
18 in final argument. It was all out there.

11:00:50 19 **MS. SCARDINO:** Objection?

11:00:50 20 **A** This was no secret.

11:00:52 21 **MS. SCARDINO:** Object.

11:00:53 22 **BY MS. SCARDINO:**

11:00:53 23 **Q** Did you have a written contract with Mr. Beckcom in
24 Mr. Prible's case?

11:00:57 25 **A** I did not.

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11:00:58 1 Q Did you have a written contract with Mr. Foreman in
2 Mr. Prible's case?

11:01:04 3 A One more time, Mr. Foreman was not involved in Jeffrey
4 Prible's case. I know you want him to be, but he was not.

11:01:10 5 Q Did you have a written contract with Mr. Foreman for
6 Mr. Prible's case?

11:01:16 7 A Mr. Foreman was not involved in Mr. Prible's case.

11:01:22 8 **SPEAKER:** Asked and answered.

11:01:26 9 **BY MS. SCARDINO:**

11:01:26 10 Q Did you enter into a written contract with Mr. Moreno in the
11 Herrero case?

11:01:32 12 A No.

11:01:33 13 Q Did you enter into a written contract with Mr. Foreman in
14 the Herrero case?

11:01:40 15 A No.

11:01:41 16 Q Did you enter into a written contract with Mr. Dominguez in
17 the Herrero case?

11:01:47 18 A No.

11:01:47 19 Q Did you enter into a written contract with Mr. Eddie Gomez
20 in the Herrero case?

11:01:54 21 A He did not testify, and I don't remember him for that
22 reason, but the answer is there was no written contract for any
23 of them.

11:02:04 24 Q Okay. And you say that these informant contracts were
25 pretty rare, right? They didn't --

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A No, that's not what I said.

Q Okay.

A I said these contracts that you've talked about on page 14 and tried to make appear to be the same kinds of testimony we've been discussing all day be relevant are very rare. That's what I said.

Q I'm going to show you Exhibit 162. Exhibit 162 is an informant agreement made between the Harris County DA's office and Vincent Flores on July 23rd, 1996. Do you see that?

A I do.

Q And this document was produced by the DA's office in this case from your file. And this is an example of a contract that would be entered into by the DA's office with another -- with an informant, right?

A I don't understand the relevance. Whatever this is, 162, has nothing to do with Prible or Herrero.

Q And I'm not asking you if it has anything to do with --

A Your question made it sound like -- you said it was produced as part of this file, as if it had something to do with Prible or Herrero, and that is not true.

Q Okay. Do you know that Mr. Flores was -- was a witness in Prible's case?

A I don't remember him.

Q Okay. This -- and I'm representing to you that this agreement was found in your Prible file and was produced to us

Video Deposition of Kelly Siegler

1 by the DA's office. Do you deny that?

11:03:33 2 **A** I don't remember him.

11:03:34 3 **Q** Okay. You don't remember him?

11:03:36 4 **A** I do not.

11:03:36 5 **Q** Okay. Now, earlier when I was reading from Exhibit 154-5
6 and those two informant -- the contemplation of the use of an
7 informant that we already discussed did not apply in this case
8 but in those two situations, deviations from that policy could
9 only be made in writing by the DA for good cause shown by the
10 prosecutor urging such deviation, right?

11:04:09 11 **A** If we're talking about page 154-5 in the context of working
12 off dope deals, contracts through Special Crimes, I don't know
13 what the deviation might have been. I never dealt with the
14 deviation where that would have arisen. But if that's what the
15 manual says, that's what the manual says.

11:04:32 16 **Q** Okay. Is it your testimony that nothing in the policy
17 manual addressed the situation when informants would be used in
18 the matter that -- in the manner that you used them in the
19 Prible case?

11:04:45 20 **A** I have no idea what's in that manual. Like I said, it's
21 this thick (indicating).

11:04:51 22 **Q** And it addresses agreements with cooperating individuals.
23 Are you familiar with this paragraph of the manual?

11:05:01 24 **A** Let me read it.

11:05:02 25 **Q** Okay.

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1 **A** I haven't read the manual since about 1987.

2 **Q** Okay. So your understanding of the Harris County District
3 Attorney's policies was that no one needed to sign off on your
4 use of informants in the Prible case; is that correct?

5 **A** That's correct.

6 **Q** Okay. You had the ultimate discretion whether to use an
7 informant in Mr. Prible's case, right?

8 **A** I did.

9 **Q** And no one else needed to know about your use of that
10 informant or your conversations leading up to your use of that
11 informant in the case?

12 **A** Well, it wasn't a secret. You made it sound like I was
13 trying to keep it a secret.

14 **Q** Well, did you share with Mr. Wiser and Mr. Bonds your
15 communications with these various informants?

16 **A** They knew what was going on. Vic didn't come to the
17 Beaumont meeting with Johnny Bonds and me. Vic didn't go with
18 me to talk to Michael Beckcom the day before he testified
19 because Beckcom was my witness. We divided up the witnesses.
20 He did his. I did mine.

21 **Q** It looks like you go through a lot of hoops to use an
22 informant in a case where you're trying to work off a charge?

23 **A** It was to watch over the cops.

24 **Q** Okay. And so I think you'll agree that when you -- it
25 sounds like when you used an informant that was already

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1 imprisoned in federal prison to testify against -- against
2 Mr. Prible in his capital murder trial, that these requirements
3 listed in the policy manual flew out the window. They didn't
4 apply to that situation, correct?

11:06:34 5 **A** Two different scenarios.

11:06:37 6 **Q** Okay. So the answer is yes, these guidelines did not apply
7 to the situation in Mr. Prible's case?

11:06:43 8 **A** Correct.

11:06:44 9 **Q** Okay. And, likewise, moving on down that page 154-16, it
10 says, "No agreement for consideration on a pending case will be
11 considered where the pending case involved any use of a deadly
12 weapon, involved any act of violence to other persons,
13 cooperating individual is a habitual criminal, cooperating
14 individual has been adjudged guilty on pending case, involves
15 one person working off a case for another, vicarious contract,
16 or the agency arresting the cooperating individual is not the
17 agency seeking the contract, unless the arresting agency is
18 aware of the contract and agrees to the terms in writing prior
19 to any agreement with the cooperating individual."

11:07:30 20 So is it your testimony that the passage I just read would
21 not have applied to any of the informants that you used in the
22 Prible or Herrero cases?

11:07:40 23 **A** The passage that you just read applies to those defendants
24 in the free world who a cop is asking to work off a dope case
25 through a contract by selling more dope on the streets, and the

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1 passage here applies because if the pending case involved
2 violence, weapons, serious victims and all that, those were the
3 cases we were going to let a cop willy-nilly decide to work off
4 a case through. To us, it was more important that the pending
5 case matter than a cop deciding unilaterally to work off my case
6 because he thought he had a good snitch that could get him more
7 dope off the streets.

11:08:20 8 Q Okay. So let's go through these 1 through 6, and I'm going
9 to take each informant from the Prible and Herrero cases and ask
10 you a question.

11:08:29 11 First, Mr. Beckcom. Mr. Beckcom had already been adjudged
12 guilty on his pending case, right? He was in prison?

11:08:39 13 A Well, it was -- it wasn't pending. It was resolved.

11:08:45 14 Q I'm sorry. His resolved -- his case was resolved. He was
15 in prison --

11:08:48 16 A Yes.

11:08:48 17 Q -- correct?

11:08:48 18 He had been convicted of capital murder, correct?

11:08:53 19 A Yes.

11:08:53 20 Q He -- his deadly weapon of choice in that case was a metal
21 toolbox that he had put his victim in and then threaded a garden
22 hose from the exhaust pipe of his car and turned the car on,
23 right?

11:09:05 24 A Yes.

11:09:05 25 Q Okay. So it definitely involved an act of violence to

Video Deposition of Kelly Siegler

1 another person?

11:09:09 2 **A** It did.

11:09:10 3 **Q** Uh-huh. And he was an habitual criminal, correct?

11:09:14 4 **A** I don't remember.

11:09:15 5 **Q** You don't recall?

11:09:16 6 **A** I don't want to argue with that, but I don't remember.

11:09:18 7 **Q** Okay. And then Foreman -- Nathan Foreman, his crime was

8 assault causing bodily injury. Do you remember that?

11:09:26 9 **A** Nathan Foreman never testified.

11:09:28 10 **Q** That's not my question.

11:09:29 11 **A** Well, which case are we talking about?

11:09:31 12 **Q** I'm asking you if you recall that Nathan Foreman was

13 convicted of assault causing bodily injury?

11:09:38 14 **A** I don't remember what his conviction was for --

11:09:40 15 **Q** Okay.

11:09:40 16 **A** -- because I never used him.

11:09:41 17 **Q** Do you remember that he was a violent criminal?

11:09:43 18 **A** I never used him.

11:09:44 19 **Q** Well, you spoke with him --

11:09:46 20 **A** I don't know what --

11:09:46 21 **Q** -- on August 8th, 2001, right?

11:09:48 22 **A** I'm sorry. I what?

11:09:50 23 **Q** You spoke with him on August 8th, 2001, right?

11:09:52 24 **A** I did.

11:09:52 25 **Q** And did you ever speak with him again after that?

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1 **A** He probably tried to call me, but I don't know what we
2 talked about for very long because I knew he was a liar.

3 **Q** Okay. But you never met with him in person again?

4 **A** After the Beaumont -- after the --

5 **Q** August 8th, 2001?

6 **A** -- downtown Houston day, no.

7 **Q** Okay. Nathan Foreman was a habitual criminal. Do you
8 remember that?

9 **A** I don't remember.

10 **Q** Okay. Well, my question to you is these six requirements
11 for an informant -- or for an agreement for consideration to be
12 given to an informant in the type of case that we discussed
13 earlier, the drug case on the street, if you had a different
14 situation like the Prible case, it didn't matter if the
15 informant was involved in a crime that had -- or committed a
16 crime that involved the use of a deadly weapon, right? You
17 could still use him?

18 **A** Of course, it mattered.

19 **Q** Well, you could still use him as an informant. It wouldn't
20 preclude you from using him as an informant, right?

21 **A** Not that alone, no.

22 **Q** Okay. You could also use him if his crime involved an act
23 of violence to another person?

24 **A** I could.

25 **Q** Okay. You could also use him if he was a habitual criminal?

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A I could.

Q Okay. And you could also use him if he had been adjudged guilty on another case?

A I could.

Q Okay. So these 1 through 6 requirements, they only applied if you were working with informants who were trying to work off a drug case on the street, right?

A That's incorrect. These rules applied in writing because we were trying to watch over the cops, too, on page 154-16, on those specific types of cases.

The factors that you've listed that you think are important, I agree they are important, and in any case, whether it's a murder or a DWI case, before I'm going to use a snitch or an inmate as a witness, I care about everything that's listed here. Of course, it's important. We don't just blow it off and use every inmate that comes walking around wanting to give information. That ought to be pretty obvious to you that I didn't use them all.

Q Well, Mr. Beckcom, who testified in Mr. Prible's case --

A Yes, ma'am.

Q -- Mr. Moreno, who testified in Mr. Herrero's case, and Mr. Dominguez, who testified in Herrero's case, all of them were involved in crimes involving the use of a deadly weapon, an act of violence, they were all habitual criminals, and they had all been adjudged guilty, right?

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1 11:12:21 1 A Those are typically the people that end up in federal prison
2 that can be witnesses.

1 11:12:25 3 Q Did you ever contact FCI Beaumont to ask to speak to an
4 inmate?

1 11:12:29 5 A You mean like generically or by name?

1 11:12:36 6 Q By name.

1 11:12:37 7 A Yes.

1 11:12:38 8 Q Okay. And when you did finally hook up on the phone, the
9 inmate would be in the unit manager's office speaking with you
10 on the phone; is that right?

1 11:12:46 11 A Yes. Yes.

1 11:12:46 12 Q Okay. And that phone call would not be recorded, would it?

1 11:12:49 13 A I don't know. That's a federal prison rule. I don't know
14 what they're recording when they're calling from the case
15 manager's office.

1 11:12:54 16 Q Okay.

1 11:12:54 17 A I don't know the rules.

1 11:12:56 18 Q Okay. You do know that phone calls with inmates from the
19 usual inmate phones, those would have been recorded, right?

1 11:13:02 20 A I would assume so.

1 11:13:03 21 Q Okay. I'm going to show you Exhibit 170, Ms. Siegler. This
22 is the inmate phone list for Michael Beckcom dated
23 December 19th, 2001. And you see that he added your name to his
24 phone list on that day?

1 11:13:27 25 A I see that.

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Q Okay. That was your direct line at the DA's office?

A It wasn't my direct line, but it was to major offenders.

Q If you go to the next page, this is his printout of his
phone calls in 2002 from the inmate phones.

A Okay.

Q And we understand those are different from the unit
managers' phones.

A Okay.

Q Okay. And so every time that number 6178 appears, that
phone call was made to you, right?

A No. As I said, 6178 went to major offenders. You have
Special Crimes. It has four divisions, each with their own
number. One of those was major offenders. It wasn't my direct
line.

Q Okay. Would he have been speaking with anyone else at the
DA's office?

A There are five -- five or six other prosecutors, two or
three investigators.

Q Do you know if he was speaking to any other investigators or
prosecutors during the time that you were working with him on
the Prible case?

A You said this is the inmate phone.

Q Right. This is Mr. Beckcom's phone records from 2002 --

A So he had his own phone?

Q -- of phone calls he made from the inmate phones.

Video Deposition of Kelly Siegler

11:14:32 1 **A** He had his own phone?

11:14:33 2 **Q** No. This is from the inmate phones at FCI Beaumont.

11:14:38 3 **A** Well, how do you know they're from Michael Beckcom?

11:14:40 4 **Q** Because if you go to the top, it says, "Inmate name Michael
5 Beckcom," and these were produced to us by the Board of Prisons.

11:14:46 6 And so my question to you is when that number -- the 6178
7 number appears on his phone list, that phone call was going to
8 the Harris County DA's office, right?

11:15:02 9 **A** That is correct.

11:15:02 10 **Q** Okay. But you're saying he might have been talking to other
11 people in the office at the same time as he was talking with
12 you, so you didn't necessarily speak with him at those -- on
13 those phone calls?

11:15:12 14 **A** I'm saying that if he called 6178, the -- the major
15 offenders number, depending on how long the call went or if he
16 was placed on hold, he might not have ever connected with me.
17 He could have called just to try and talk with me. I might not
18 have been there. I might not have taken the call. So just
19 because there's a call made to 6178 doesn't mean he necessarily
20 ever even connected with me.

11:15:33 21 **Q** Okay. It was an attempt by him to call you at least?

11:15:36 22 **A** Yes.

11:15:37 23 **Q** Okay. And you'll see on Exhibit 170 that he called that
24 6178 number that he had put on his phone list as belonging to
25 you, he called it on April 4th, 2002.

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1 So the one that's highlighted, he called you on April 4th,
2 2002, right?

11:15:53 3 **A** I see that.

11:15:58 4 **Q** Okay. He called you again on --

11:16:01 5 **A** Wait. Wait. Wait. It's for only how many minutes?

11:16:04 6 **Q** Six minutes.

11:16:05 7 **A** And what time is the call?

11:16:08 8 Six minutes doesn't mean he got in touch with me. He could
9 have put on hold and I never picked up the call.

11:16:13 10 **Q** Do you recall 16 years -- or 15 years ago that that
11 happened?

11:16:17 12 **A** Oh, I recall that I was so busy, they would saying, "Kelly
13 Siegler, line whatever," and I could never get all the calls.
14 Yes, it happened all the time.

11:16:26 15 **Q** Okay. So you deny speaking with him on April 4th, 2002?

11:16:29 16 **A** No. I don't remember, but just because it says he called
17 6178 and the call lasted six minutes doesn't mean that we
18 actually spoke. That's what I'll say.

11:16:38 19 **Q** Okay. He called your line for two minutes. You see that?

11:16:40 20 **A** Yes.

11:16:40 21 **Q** And on April 24th, 2002 --

11:16:42 22 **A** I'm pretty sure that wasn't a connected call to me for only
23 two minutes. The next one.

11:16:46 24 **Q** Do you have any evidence that that wasn't a connected --
25 connected call, or are you just speculating?

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11:16:52 1 **A** I don't believe that I talked to him on a phone call that
2 lasted only two minutes.

11:16:57 3 **Q** So you're denying that you spoke with him on that day?

11:17:00 4 **A** I don't remember that call, no.

11:17:01 5 **Q** You're denying that you spoke with him on that day or you
6 just don't remember?

11:17:03 7 **A** I don't remember. I don't remember.

11:17:04 8 **Q** You don't remember?

11:17:05 9 **A** It doesn't make any sense that the call would last two
10 minutes.

11:17:08 11 **Q** If you look at -- going up to April 24th, 2002, another
12 phone call to your office?

11:17:15 13 **A** Again for two minutes.

11:17:16 14 **Q** Okay. And on May 15th, 2002, another phone call to your
15 number?

11:17:24 16 **A** For three minutes.

11:17:25 17 **Q** Uh-huh. And July 12th, 2002, at the top there, it's a phone
18 call for one minute?

11:17:39 19 **A** For one minute. I see that.

11:17:41 20 **Q** And on July 16th, 2002, there's a couple of phone numbers --
21 phone calls?

11:17:50 22 **A** I see those.

11:17:50 23 **Q** Do you see that?

11:17:51 24 **A** For two minutes and for one minute.

11:17:53 25 **Q** Uh-huh. And then there's three times -- three phone calls

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1 on October -- I mean, on August 2nd, 2002. Do you see that?

11:18:01 2 **A** So three calls on the same date, which means that he
3 obviously didn't get ahold of me for the one-minute call or the
4 three-minute call because there's a nine-minute call, too.

11:18:09 5 **Q** Okay. So whenever he would call you and leave -- he would
6 leave a message, I suppose, with your office?

11:18:13 7 **A** He would call 755-6178 and get the main receptionist, who
8 would then put him through to my secretary, Esmeralda, and then
9 she would try to find me or take a message, which is probably
10 why there's so many two-minute, one-minute and three-minute
11 calls, and they never did get ahold of me.

11:18:31 12 **Q** And you would then return his phone call by calling his unit
13 manager to have a conversation on that phone?

11:18:37 14 **A** No. I got a lot of calls that I didn't return.

11:18:39 15 **Q** So you're saying that he kept calling you over and over, he
16 was your witness in -- in Prible's case, and you never returned
17 his phone call. Is that your testimony?

11:18:45 18 **A** I did return some of the phone calls. I said that I don't
19 remember returning all of these individual phone calls.

11:18:51 20 **Q** Okay. But some of those phone calls that you returned, you
21 would have called the unit manager, who would have put
22 Mr. Beckcom on the telephone, right --

11:18:57 23 **A** Yes.

11:18:57 24 **Q** -- like we discussed earlier?

11:18:59 25 **A** Yes.

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1 11:19:00 1 Q Exhibit 171 is telephone records for Nathan Foreman produced
2 by the Board of Prisons. And you see on the first page of that,
3 that Mr. Foreman added you to his phone record -- or his phone
4 list on October 3rd, 2001, right?

11:19:25 5 A I see that. I also notice that now he has the right number.

11:19:28 6 Q Right. He has the correct number. And this is almost two
7 months after you spoke with him in August 8th, 2001, and
8 determined he was lying about Mr. Prible's case, right?

11:19:37 9 A That's what the date says, yes.

11:19:39 10 Q Okay. And there are no phone calls to you, if you look at
11 Mr. Foreman's list, in 2002. Do you see that?

11:19:52 12 A Does this cover the whole year?

11:19:54 13 Q Yeah. Well, yeah. I'm just asking you -- it looks like it
14 covers from January to October 2002, and nowhere -- I'll
15 represent to you that nowhere in that list is a phone call to
16 that 6178 number.

11:20:09 17 A Okay.

11:20:09 18 Q But you were speaking with Mr. Foreman during this time,
19 correct?

11:20:12 20 A No.

11:20:12 21 Q You weren't speaking with him?

11:20:13 22 A Not that I remember.

11:20:14 23 Q Is it your testimony that you never spoke with him again
24 after August 8th, 2001?

11:20:18 25 A That was the day of the downtown fed facility?

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1 Q Uh-huh.

2 A I never talked to him again.

3 Q And, again -- and you were speaking -- you did speak with
4 Mr. Moreno on the phone leading up to Mr. Herrero's trial,
5 right?

6 A I know I got the letter, the letter that we talked about. I
7 know that I went to see him at some point. Whether or not there
8 was a phone call in between before I went to see him, I don't
9 remember.

10 Q Okay.

11 A I would think there was, but I don't remember for sure.

12 Q And that phone call that there might have been, would that
13 have been on the unit manager's telephone?

14 A It had to be.

15 Q Okay. And sometimes BOP employees would call you about
16 cases that you were working on with these inmates, would they
17 not?

18 A No.

19 Q But I'll -- I'll represent to you that one of these pink
20 slips in Exhibit 152 that was produced by the DA's office in
21 this case, it shows Lieutenant Robert Clark from FCI Beaumont
22 called Kelly re Herrero. So does that refresh your memory as to
23 whether any BOP employees ever called you to discuss the Herrero
24 case?

25 A No.

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1 Q Now, you said a moment ago, I believe, that you did not
2 speak with Mr. Foreman again after that August 8th, 2001,
3 meeting with him in --

4 A Not that I remember.

5 Q Okay. Exhibit 111 is a letter from Alan Percely,
6 Mr. Foreman's attorney, to you on November 12th, 2001, if you
7 want to take a moment to read it.

8 A Okay.

9 Q And he says, "As you are already aware, I am Mr. Foreman's
10 attorney on federal and state criminal matters," right?

11 A That's what he says.

12 Q So had you already been talking with Mr. Percely about
13 Mr. Foreman?

14 A Actually, I think what happened was he came up to me one day
15 in court and said that he represented Nathan Foreman, and I
16 thought to myself, "Of course, you do," and that was it.

17 Q Okay. And then he reaches out to you on this November 12th,
18 2001, letter, right?

19 A Yes.

20 Q Okay. And in his letter, he said that Nathan Foreman told
21 him that he has information that will lead you to the weapon
22 that was used in the murder case that you are preparing to go to
23 trial on in the near future. Do you see that?

24 A I see that.

25 Q Okay. How did Mr. Foreman know that the murder weapon in

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1 Mr. Prible's case had never been found?

11:22:45 2 **A** I don't even think they're talking about Prible. I think
3 it's Alan Percely talking bull with Nathan Foreman, who's
4 talking bull. I don't know what they're talking about, which
5 proves the point.

11:22:54 6 **Q** So you don't --

11:22:55 7 **A** They're both full of it.

11:22:56 8 **Q** Okay. So you don't know what case he's referring to in this
9 letter, whether it's the Prible case or the Herrero case?

11:23:01 10 **A** I tried a lot of cases in '02. It could have been one of
11 the other ones that I tried. It doesn't mean it's Prible --

11:23:07 12 **Q** Okay.

11:23:07 13 **A** -- or Herrero.

11:23:08 14 **Q** And Mr. Percely proposes a deal in exchange for whatever
15 information Mr. Foreman has, right?

11:23:15 16 **A** He tries to, yes.

11:23:16 17 **Q** Okay. And instead of telling Percely -- or ignoring this
18 letter or telling him to get lost or telling Foreman to get
19 lost, instead, you set up a face-to-face visit with Mr. Foreman
20 to discuss this new information he had, didn't you?

11:23:31 21 **A** The letter is dated November 12th of '01, and the meeting
22 with Foreman was August of '02?

11:23:39 23 **Q** August 8th, 2001, was the initially meeting with Foreman.

11:23:45 24 **A** Okay. So ask me the question again. So the letter came
25 after the meeting?

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1 11:23:49 1 Q Yes, the letter came after the meeting, and I'm asking you,
2 after you got this letter of November 12th, 2001, you could have
3 told Percely to get lost, right?

11:23:58 4 A I could have.

11:23:59 5 Q You could have told Foreman, "I never want to talk to you
6 again. You're a liar," right?

11:24:04 7 A I could have.

11:24:05 8 Q Okay. You could have ignored them, right?

11:24:06 9 A I did.

11:24:07 10 Q But instead, after you received this letter, you arrange for
11 another face-to-face meeting with Mr. Foreman at FCI Beaumont,
12 didn't you?

11:24:16 13 A Not that I remember.

11:24:19 14 Q Now, Exhibit 77 is a letter dated November 20th, 2001, from
15 Johnny Bonds to Lieutenant Clark requesting that he -- you and
16 he be allowed to visit with Nathan Foreman on December 10th,
17 2001. Do you see this?

11:24:36 18 A I see that.

11:24:40 19 Q And this letter was written eight days after Mr. Percely's
20 letter to you was written, right, on November 12th, 2001?

11:24:53 21 A Yes.

11:24:54 22 Q So when do you think you would have received this
23 November 12th, 2001, letter from Alan Percely?

11:24:59 24 A Well, I would hope the next day.

11:25:00 25 Q Within a couple of days?

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1 1:25:02 1 Okay. And so pretty soon after receiving this letter, you
2 have Johnny Bonds request another meeting with Mr. Foreman at
3 FCI Beaumont, right?

1 1:25:14 4 **A** This is Ted requesting it for Johnny and me.

1 1:25:18 5 **Q** I'm sorry.

1 1:25:19 6 **A** But yes.

1 1:25:19 7 **Q** Yes. So you, obviously, asked Mr. Wilson to request this
8 meeting, right?

1 1:25:23 9 **A** Right.

1 1:25:24 10 **Q** Okay. So even though he lied to you back in November -- or
11 in August, a few months earlier, maybe now he's got some good
12 information for you, right?

1 1:25:38 13 **A** I don't remember why we would have asked to go see him again
14 because Johnny and I both believed, when we walked away from the
15 meeting with Nathan Foreman at the downtown Houston facility,
16 that he was not being truthful.

1 1:25:50 17 **Q** I'm going to show you Exhibit 78. Exhibit 78 is a
18 November 26, 2001, letter from Ted Wilson to Lieutenant Robert
19 Clark again at FCI Beaumont medium. And he says, "I'm
20 respectfully requesting that you permit Assistant District
21 Attorney Kelly Siegler and Harris County District Attorney's
22 Investigator Johnny Bonds in your facility to interview an
23 inmate by the name of Michael Beckcom on December 10th, 2001."

1 1:26:33 24 Do you see that?

1 1:26:34 25 **A** I do.

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Q Okay. And that's the same date that you were going to interview Mr. Foreman, right?

A Well, the letter is the same date. Did we ask for the same date? Oh, yes. December 10th, yes.

Q Yeah. The letters are different dates --

A December 10th.

Q -- but the date of the meeting requested is the same?

A Yes.

Q So you requested to meet with both of those inmates back to back on that date, right?

A Yes.

Q And on that date, December 10th, 2001, did you also meet with Jonathan Jefferson at FCI Beaumont?

A I still don't remember that name.

Q If you turn to page 109-7 -- Exhibit 109-7, and these, again, are notes in Johnny bonds handwriting, right?

A Yes.

Q And you see it looks like there he's memorializing a meeting with Nathan Foreman on December 10th, 2001, which would have -- which corresponds to the letter that I showed you earlier requesting a meeting with Mr. Foreman on that date?

A It does.

MS. MIRANDA: Objection, form.

BY MS. SCARDINO:

Q Do you see that?

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Were you present at this meeting with Mr. Bonds and

Mr. Foreman?

A If -- if Johnny would have been interviewing Nathan Foreman, I would have been there.

Q Okay. Would you have taken notes on that meeting?

A Not necessarily.

Q If you had taken notes, where would they be?

A They would be in the file, but I probably didn't take any.

Q You wouldn't have destroyed notes about that meeting or any other meeting, would you?

A No. I didn't take a lot of notes.

Q Let's look at Exhibit 78. Okay. Exhibit 78 I showed you earlier, so you should have a copy of it, and it's that November 26th, 2001, fax from Johnny Bonds to Lieutenant Clark.

A Okay.

Q And on the fax, if you look at the front cover sheet, it says, "Another visitation request letter. We are supposed to be at your unit around 11:00 a.m. on December 10th, 2001, to see Inmate Foreman. We also need to see Inmate Beckcom after we talk to Foreman. See attached letter. If there's a problem, please call me. Thanks." Do you see that?

A I do.

Q Okay. And on that day when you met with Mr. Beckcom -- you recall meeting with Mr. Beckcom that day, right?

A Yes.

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Q And did you meet with him in the lieutenant's office?

A I don't remember where we met.

Q Okay. I'll -- I'll represent to you that was his testimony at trial, that you met in a lieutenant's office?

A That's what Beckcom said at trial?

Q Yes.

A It's in the transcript?

Q That -- that you met at a lieutenant's office, yes.

A Okay.

Q Okay. Do you recall the name of that lieutenant?

A I do not.

Q Okay. Do you -- and you knew at this time that Mr. Foreman and Mr. Beckcom were cellmates at FCI Beaumont, right?

A I don't know if I knew that back then.

Q When did you learn that?

A I don't know that I've ever learned that. I've seen that in your petition.

Q You never knew at any time during your prosecution of Mr. Prible's case that Foreman and Beckcom were cellmates at FCI medium?

A I don't remember if I knew that. I knew that they all -- they all hung out together on the yard working out outside. I knew that. But who was whose cellmate, I don't know if I ever knew that.

Q And you don't -- you remember meeting with Beckcom on

Video Deposition of Kelly Siegler

1 December 10th, 2001, but not with Foreman; is that correct?

11:30:01 2 **A** I remember the Beckcom meeting. We -- it looks like, from
3 your paperwork, we met with Beckcom that same day, too. If
4 Johnny told you that we met with Foreman the same day, then we
5 did, and I just don't remember it. If Johnny remembers it, then
6 that's what happened.

11:30:16 7 **Q** And that meeting would have been in the same office,
8 presumably, if you're --

11:30:21 9 **A** You would think so.

11:30:22 10 **Q** You would think so. So one would be coming in, and one
11 would be leaving?

11:30:26 12 **A** Unless they were in separate areas and it was easier for
13 them to move us than them.

11:30:30 14 **Q** Do you have any recollection of that being the case?

11:30:32 15 **A** We moved around a lot there. We went where they told.

11:30:35 16 **Q** Okay. I'm asking you specifically on December 10th, 2001,
17 when you asked to meet with Beckcom immediately after Foreman,
18 do you have a specific recollection of them moving you to a
19 different part of the prison to meet with these two individuals?

11:30:48 20 **A** I don't -- no, I don't remember where in the prison we met
21 with either one of them.

11:30:53 22 **Q** Do you know if Beckcom and Foreman passed each other coming
23 and going that day to the meeting?

11:30:57 24 **A** I have no idea.

11:31:00 25 **Q** Presumably, they're cellmates, so they're talking about this

Video Deposition of Kelly Siegler

1 case together, right?

11:31:04 2 **A** I didn't know they were cellmates.

11:31:06 3 **Q** Okay. 109-8, again, this is Mr. Bonds' handwriting, right?

11:31:10 4 **A** Yes.

11:31:10 5 **Q** And it looks to be a conversation -- or a memorialization of
6 the meeting that he had with Mr. Beckcom on December 10th, 2001,
7 in which you were also present, right?

11:31:22 8 **A** I see the name Michael Beckcom on the first line. I can't
9 read the rest of it, if you want to read it to me.

11:31:29 10 **Q** Okay. It says, "12/10/01, Michael Beckcom. Nathan never
11 told Mike about Kelly and Bonds." And Nathan there is referring
12 to Nathan Foreman, right?

11:31:39 13 **A** It would be Nathan Foreman.

11:31:41 14 **Q** So at this conversation -- or this meeting that you and
15 Mr. Bonds had with Beckcom, y'all were discussing Nathan Foreman
16 and his role in this case, right?

11:31:49 17 **A** Not necessarily.

11:31:51 18 **Q** Well, why else would Nathan Foreman's name appear on these
19 notes?

11:31:55 20 **A** We would ask Michael Beckcom where all he had information
21 about Prible, and Johnny could have just made a note, "It wasn't
22 from Nathan." Johnny could have just made that note.

11:32:04 23 **Q** He could have just made a note, "It wasn't from Nathan,"
24 just out of the blue. "It wasn't from Nathan"?

11:32:09 25 **A** If we had just interviewed Nathan Foreman right before

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1 Beckcom like you're saying the paperwork shows. I mean, you
2 should ask Johnny Bonds that question, not me.

11:32:17 3 Q I have asked Johnny Bonds that question, but you were always
4 at the -- that meeting, right?

11:32:22 5 A Yes, but these aren't my notes.

11:32:23 6 Q Okay. But if you had asked Mr. Beckcom where he got
7 information, would he have said to you, in response to that,
8 "Well, I didn't get it from Nathan Foreman"?

11:32:35 9 A No, but you need keep in mind that Johnny and I already
10 didn't have a very good view of Nathan Foreman's credibility.
11 So we wanted to make sure Michael Beckcom wasn't getting it from
12 Nathan Foreman --

11:32:44 13 Q So did --

11:32:45 14 A -- since we already thought he was a liar.

11:32:46 15 Q And so did you tell Michael Beckcom, "Don't talk to Nathan
16 Foreman. He's a liar"?

11:32:50 17 A I doubt it.

11:32:51 18 Q Did you bring Nathan Foreman's name up in this conversation
19 with Michael Beckcom?

11:32:56 20 A Well, his -- his name is mentioned in Johnny Bonds' notes,
21 so his name might have come up.

11:33:00 22 Q Had you asked Mr. Beckcom to take notes of his
23 communication -- his conversations with Mr. Prible?

11:33:04 24 A I did not.

11:33:05 25 Q You did not?

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A No.

Q Did you ask him to present you with a written statement --

A No.

Q -- about Mr. Prible's -- what he had learned about

Mr. Prible's case?

A No.

Q Okay. Did you use this statement that Mr. Beckcom gave to

you at that December 10th, 2001, meeting as a script for

Mr. Beckcom's testimony at trial?

A As a script, no. I'm sure I -- I referred to it, I used it,

I looked it over to make sure I had it all right in my read.

But as a script, no.

Q Did you give -- or did Mr. Beckcom keep a copy or make a

copy of this statement for himself? In other words, did he give

you his only copy, or do you recall if he made a copy of the

statement himself?

A I'm sure he would keep a copy for himself, but I'm just

assuming.

Q Did you disclose to Mr. Gaiser or Mr. Wentz that you met

with Mr. Jefferson, Mr. Foreman, and Mr. Beckcom back to back at

FCI Beaumont on December 10th, 2001, to discuss Mr. Prible's

case?

A I don't remember.

Q Now, you were talking -- you began talking with the

assistant U.S. attorney for Michael Beckcom's case in California

Video Deposition of Kelly Siegler

1 months before Prible's trial, right?

11:34:43 2 **A** Months before Prible's trial?

11:34:44 3 **Q** Uh-huh. You were already in talks with the U.S. attorney
4 about a possible sentence reduction for Beckcom in this case?

11:34:50 5 **A** I think I might have called to introduce myself to make sure
6 I had the right prosecutor. I don't think we could talk much
7 beyond that because nothing had happened yet.

11:35:01 8 **Q** Why would you have called him to introduce yourself as the
9 prosecutor?

11:35:04 10 **A** To find out if he's the right prosecutor.

11:35:06 11 **Q** Okay. But why would you have done that before the trial --
12 before Mr. Prible's trial?

11:35:11 13 **A** Just to find out if he's the right prosecutor, to find out
14 about Michael Beckcom, to find out about the situation.

11:35:19 15 **Q** "The situation" meaning what? Mr. Beckcom's sentence?

11:35:23 16 **A** Mr. Beckcom's sentence, Mr. Beckcom's crime, what his fed --
17 fed prosecutor thought about him and the whole process.

11:35:30 18 **Q** I'm going to show you Exhibit 181. Exhibit 181 is a
19 March 4th, 2002, letter from Mark Cullers to you, and it says,
20 "Enclosed please find the federal trial testimony of Mike
21 Beckcom." And he -- he goes on to say, "I will forward a
22 printout of his docket sheet so you can see exactly his sentence
23 in federal court," right?

11:35:59 24 **A** That's what the letter says, yes.

11:36:01 25 **Q** Okay. And so when you called -- you reached out to

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1 Mr. Cullers, and you told him that Mr. Beckcom was a potential
2 informant for you in this Prible case and that you were
3 interested in seeing what his sentence was, correct?

11:36:19 4 **A** Among other things, yes.

11:36:21 5 **Q** Uh-huh. What else did you talk with him about?

11:36:24 6 **A** The crime Beckcom was in jail for and what this fed
7 prosecutor thought about Beckcom.

11:36:30 8 **Q** Okay. Did you discuss the possibility of a Rule 35
9 reduction for Mr. Beckcom if he testified in your case?

11:36:37 10 **A** If he testified truthfully and completely in my case, yes.

11:36:42 11 **Q** But you did discuss that --

11:36:43 12 **A** Yes.

11:36:43 13 **Q** -- with Mr. Cullers?

11:36:45 14 And I'm going to show you Exhibit 126. Exhibit 126 is a
15 March 5th, 2002, letter from Mr. Cullers to you enclosing the
16 initial Texas Rangers report regarding the murder of Nick
17 Brueggen, who was Mr. Beckcom's victim, right?

11:37:04 18 **A** I don't remember the name, but I remember this.

11:37:06 19 **Q** Okay. It says, "Thought you might find it helpful. Mike
20 Beckcom was sentenced to 135 months," right?

11:37:12 21 **A** That's what this says, yes.

11:37:13 22 **Q** Yes. And so this shows that you-all had discussed
23 Mr. Beckcom's sentence, correct?

11:37:18 24 **A** Yes.

11:37:19 25 **Q** And there would have been no reason for you to discuss

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1 Mr. Beckcom's sentence with Mr. Cullers if not in the context of
2 a potential Rule 35 motion down the road, right?

11:37:28 3 **A** Well, most likely that was the reason, but I would still
4 want to know what his sentence was and what he did.

11:37:38 5 **Q** And Mr. Beckcom knew that you were in talks with Cullers
6 leading up to Mr. Prible's trial, right?

11:37:43 7 **A** Yes.

11:37:46 8 **Q** Okay. And he knew about these conversations because you
9 wanted to reassure him that if he testified truthfully in
10 Mr. Prible's case, that a Rule 35 motion might be had, right?

11:37:56 11 **A** Who is "he"?

11:37:58 12 **Q** Mr. Beckcom.

11:38:01 13 **A** Say the question again.

11:38:04 14 **Q** You said that Mr. Beckcom was aware that you were speaking
15 with Mr. Cullers leading up to Mr. Prible's case, and I'm asking
16 you if the reason you told Mr. Beckcom that you were
17 communicating with Mr. Cullers was so Mr. Beckcom would be
18 reassured that a Rule 35 motion would be forthcoming in his case
19 if he testified truthfully; is that correct?

11:38:26 20 **A** Yes.

11:38:28 21 **Q** Now, this is undated, right, this letter? There's no date
22 on this?

11:38:33 23 **A** Correct.

11:38:33 24 **Q** Okay. And Mr. Beckcom is asking you for reassurance and --
25 and you mentioned that you did give him reassurance at some

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1 point by --

11:38:40 2 **A** This letter is different. It's not really reassurance.
3 He's asking for other things, different things.

11:38:46 4 **Q** And he also says, "Can you give me any reassurance that the
5 feds are going to do the right thing on this case?"

11:38:51 6 **A** Well, they all ask that.

11:38:53 7 **Q** And you gave him some reassurance, right?

11:38:57 8 **A** I'm sure I told him the same thing I told all of them.

11:39:00 9 **Q** Which is what?

11:39:00 10 **A** "Testify truthfully and completely about the facts of the
11 case, and if you do, when you do, I'll tell your fed prosecutor,
12 and they take it from there."

11:39:08 13 **Q** And you also reassured him by telling him that you were
14 already in communication with that prosecutor?

11:39:13 15 **A** Yes.

11:39:13 16 **Q** Yeah. He also says in that letter, Exhibit 127, "I may have
17 a solution to these problems if you can assist me in making
18 contact with the DEA and an FBI agent. Another inmate, Anthony
19 Davi, and I have come onto a couple of situations that would
20 interest both of these agencies."

11:39:30 21 Now, did you contact or -- or contact Mr. Beckcom to
22 discuss with him this information that he claimed he and Anthony
23 Davi had?

11:39:42 24 **A** No.

11:39:43 25 **Q** You never --

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11:39:44 1 **A** I don't remember.

11:39:45 2 **Q** -- spoke with him about that?

11:39:46 3 **A** I don't remember that. I don't know what that is.

11:39:48 4 **Q** Exhibit 81 is a letter from Ted Wilson from the DA's office
5 to Lieutenant Clark at FCI medium, and it's asking -- he's
6 respectfully requesting permission for you and Mr. Bonds to
7 interview two inmates by the name of Michael Beckcom and Antone
8 Davi on May 6, 2002. Do you see that?

11:40:22 9 **A** I see that.

11:40:23 10 **Q** Okay. So you did reach out to Mr. Beckcom and take him up
11 on this offer to discuss this other case with him?

11:40:32 12 **A** I -- I don't remember Antone Davi at all.

11:40:36 13 **Q** Ms. Siegler, Beckcom testified at Mr. Prible's trial that he
14 had gotten your name from Mr. Foreman. Do you remember that
15 testimony?

11:40:43 16 **A** I don't remember that part, no.

11:40:44 17 **Q** And does that refresh your recollection that it was Nathan
18 Foreman who gave Mr. Beckcom your name to call you about
19 Prible's case?

11:40:51 20 **A** Yes.

11:40:52 21 **Q** Okay. Exhibit 129 is a letter from you to Mark Cullers,
22 Beckcom's U.S. attorney out in California, dated October 29th,
23 2002. And this was right after Mr. Prible's trial, and you were
24 informing him of Mr. Beckcom's cooperation in that trial. Do
25 you see that?

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1 A Okay.

2 Q Okay. And in that letter, Exhibit 129, you tell Mr. Cullers
3 that, "Michael Beckcom first came to my attention when he made
4 me aware that he had information that would be helpful to my
5 case." Do you see that?

6 A I do.

7 Q Okay. And there's nothing in this letter to Mr. Cullers
8 about how Mr. Foreman had given Mr. Beckcom your name to call
9 you about this case, right?

10 A No.

11 Q Mr. Foreman's name is not mentioned in this letter at all?

12 A It is not.

13 Q Okay. And in the letter, you also state, quote, at that
14 time, Beckcom was incarcerated at Beaumont medium FCI with my
15 trial defendant, Prible, and that is where and how Prible came
16 into contact with Beckcom and confided details of his capital
17 murder offense to Beckcom." Do you see that?

18 A Where -- which paragraph?

19 Q That's the second paragraph, second line.

20 A Okay.

21 Q In here, there's still no mention of Mr. Foreman or this
22 larger informant network, is there, in this letter?

23 A To Beckcom's fed prosecutor, no.

24 Q That's right?

25 A There is not.

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1 Q So you never revealed to Mr. Cullers that, actually,
2 Beckcom's cellmate had come to you on August 8th, 2001, before
3 he had even met Mr. Prible, to try to set Mr. Prible up in this
4 case, and you determined that he was a liar, right?

5 A That's incorrect.

6 Q You revealed all of that to Mr. Culler?

7 A Mr. Cullers is Michael Beckcom's fed prosecutor.

8 Q I understand that.

9 Did you reveal to Mr. Cullers that you had met with Nathan
10 Foreman about Mr. Prible's case in August 8th, 2001, and
11 determined that he was lying?

12 A No.

13 Q Okay. You never mentioned Mr. Foreman at all to
14 Mr. Cullers, right?

15 A I did not.

16 Q Also in this letter to Mr. Cullers, you write, "I am not too
17 familiar with how this process works. So please forgive me if I
18 have omitted some information you need." And by "process" here,
19 you're referring to this Rule 35 sentence reduction process,
20 right?

21 A Yes.

22 Q But, in fact, you were very familiar with that process by
23 this time, right, because two months earlier, you had testified
24 in Moreno's hearing?

25 A Yes.

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1 1:43:40 1 Q I'm going to show you Exhibit 130. Exhibit 130 is a
2 handwritten thank you note from Michael Beckcom's to you dated
3 October 30th, 2002. Do you see that?

1 1:43:58 4 A I see it.

1 1:43:59 5 Q Okay. Do you recall receiving this note from Mr. Beckcom?

1 1:44:02 6 A Now that I've read it, I remember getting it.

1 1:44:04 7 Q And he says in that letter, "I also appreciate any further
8 contact you may have with Mark Cullers that might urge him to
9 expediently file his motion on my behalf." Do you see that?

1 1:44:15 10 A I do.

1 1:44:15 11 Q Okay. So by "further contact," he knows that you've already
12 been in discussions with Mr. Cullers, as we discussed
13 previously, right?

1 1:44:22 14 A Yes.

1 1:44:23 15 Q Okay. And it sounds here like this motion is a foregone
16 conclusion, wouldn't you agree?

1 1:44:31 17 He's -- he's not asking Mr. Cullers -- or not appreciating
18 any further contact you have -- may have with Mr. Cullers that
19 might convince him to file a motion on my behalf, right?

1 1:44:43 20 A That's not what the letter says.

1 1:44:44 21 Q That's not what the letter says, right? What it says was,
22 "I appreciate any further contact you may have with Mark Cullers
23 that might urge him to expediently file his motion on my
24 behalf," right?

1 1:44:54 25 A That's what it says.

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1 11:44:55 1 Q So I'm going to show you Exhibit 131. Exhibit 131 is a
2 November 4th, 2002, letters -- letter from AUSA Cullers to you
3 saying that the U.S. did not have jurisdiction to confer any
4 benefit on Beckcom for his cooperation with the State of Texas.
5 Do you see that?

1 11:45:23 6 A Let me read it.

1 11:45:29 7 I see it.

1 11:45:31 8 Q Okay. Now, you could have left it at that, right? You
9 could have left it at that, your dealings with Mr. Cullers
10 concerning Mr. Beckcom's sentence?

1 11:45:40 11 A Right.

1 11:45:40 12 Q Because at this point, you've done what you told the jury
13 that you would do, right, you would write a letter to
14 Mr. Cullers, which you did, right?

1 11:45:50 15 A There was, obviously, some confusion because Mr. Cullers
16 never told me this part that's -- that's addressed in the letter
17 dated November 4th of '02. He never told me that before, and I
18 don't know that Michael Beckcom knew that either.

1 11:46:04 19 Q And so you were under the assumption or under the
20 understanding going into that trial that he had jurisdiction to
21 do this Rule 35 agreement, right?

1 11:46:12 22 A "He" being?

1 11:46:14 23 Q Mr. Cullers.

1 11:46:15 24 A I was.

1 11:46:16 25 Q Okay. And you had conveyed that to Mr. Beckcom as well,

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1 right?

11:46:19 2 **A** I think Mr. Beckcom thought the same thing.

11:46:21 3 **Q** Uh-huh. And he only would have heard that from you, right?

4 He didn't have --

11:46:25 5 **A** Oh, no. Mr. Beckcom knew what the law was. He was well

6 aware of all of this.

11:46:30 7 **Q** If you could just let me finish my -- my question so we're

8 not talking over each other.

11:46:35 9 But Mr. Beckcom would not have had independent

10 communications with Mr. Cullers now, would he have?

11:46:39 11 **A** He could have.

11:46:41 12 **Q** You think that Mr. Beckcom might have been communicating

13 with his federal prosecutor while he was in prison?

11:46:46 14 **A** He can write letters.

11:46:48 15 **Q** So it's your testimony that all the information that

16 Mr. Beckcom was getting regarding the sentence -- the possible

17 sentence reduction, he didn't get it all from you?

11:46:59 18 **A** You should ask Mr. Beckcom that.

11:47:02 19 **Q** And on November 12th, 2002, you left Mr. Cullers a phone

20 message, Exhibit 133. Do you see it -- it -- you reference a

21 phone call that you made to him on November 12th?

11:47:28 22 **A** I see that.

11:47:29 23 **Q** Okay. Do you recall what you said to Mr. -- Mr. Cullers in

24 that phone message on November 12th, 2002?

11:47:34 25 **A** No.

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1 Q Mr. Cullers called you back and left a message for you on
2 November 12th, 2002. Do you recall that message?

1 1:47:44 3 Do you recall receiving that message from Mr. Cullers?

1 1:47:47 4 A Vaguely.

1 1:47:48 5 Q Okay. It sounded like there was a misunderstanding between
6 the two of you. Do you agree?

1 1:47:54 7 A Yes.

1 1:47:58 8 Q And he says in that -- in that message -- and he was
9 responding to your message on November 12th, 2002, right?

1 1:48:05 10 A Yes.

1 1:48:06 11 Q And he says in the beginning of that message, "If Mike
12 testified in your case with the expectation of some deal from
13 us, that would probably have to be disclosed to the defense in
14 your case, end quote. You heard that?

1 1:48:19 15 A I heard that.

1 1:48:19 16 Q Okay. Did you tell Mr. Cullers in that November 12th, 2002,
17 message that you left for him that Mike had testified in this
18 case with the expectation of some deal?

1 1:48:31 19 A No.

1 1:48:32 20 Q Okay. I'm going to show you Exhibit 133.

1 1:48:35 21 And in that letter, Exhibit 133, you beg Mr. Cullers to
22 reconsider based on the, quote, vital role that Beckcom played
23 in obtaining a conviction of Prible, right?

1 1:48:47 24 A I disagree with the word "beg," and the letter speaks for
25 itself.

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1 11:48:52 1 Q Okay. Do you agree that Mr. Beckcom was the star witness in
2 your case against Mr. Prible?

1 11:48:57 3 A No.

1 11:48:58 4 Q But he did play a vital role?

1 11:49:00 5 A No. He played a role.

1 11:49:02 6 Q So you disagree with the statement "a vital role" that you
7 said in this -- in this letter that you wrote to Mr. Cullers?

1 11:49:10 8 A Michael Beckcom played a role.

1 11:49:15 9 Q I'm going to show you Exhibit 135. This is a November 15th,
10 2002, e-mail from you to Mr. Cullers regarding Beckcom's
11 attorney. Do you see that?

1 11:49:41 12 A I do.

1 11:49:41 13 Q And you're giving -- you're providing Mr. Cullers with
14 Beckcom's attorney's name and contact information, right?

1 11:49:50 15 A Yes.

1 11:49:50 16 Q Okay. And eventually, Mr. Cullers did decide to -- to write
17 that Rule 35 motion for Mr. Beckcom, right?

1 11:49:57 18 A I don't remember.

1 11:49:58 19 Q You don't recall if Mr. Beckcom got any time off --

1 11:50:01 20 A I do not. What is the end of the story? I don't know.

1 11:50:04 21 Q Well, I'm ask --

1 11:50:06 22 A I don't know.

1 11:50:07 23 Q I mean, I'm asking you because you were at the story.

1 11:50:10 24 A And I don't remember.

1 11:50:11 25 Q So you -- you're saying after you -- this last

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1 correspondence that I showed you with Mr. Cullers, you didn't
2 have any follow-up with him about what the sentence reduction
3 would be?

11:50:20 4 **A** I don't remember if I did because I don't know if there was
5 a sentence reduction.

11:50:26 6 **Q** Other than this correspondence that you had with Mr. Cullers
7 regarding that Rule 35 motion for Mr. Beckcom, did you do any
8 other favors for Mr. Beckcom?

11:50:42 9 **A** Well, I wouldn't characterize that as a favor either.

11:50:45 10 **Q** I'm going to show you Exhibit 170, which we've looked at
11 before. It's Michael Beckcom's phone records, and I'll tell you
12 exactly where to go. If you go to Bates label number 63 down at
13 the bottom.

11:51:05 14 If you go to date April 17th, 2002 --

11:51:09 15 **A** Okay.

11:51:10 16 **Q** -- you'll see that Beckcom called the DA's office Special
17 Crimes phone number on that date?

11:51:15 18 **A** I see that.

11:51:16 19 **Q** Okay. So that was April 17th, 2002, he's trying to reach
20 out to you?

11:51:28 21 **A** Not necessarily.

11:51:30 22 **Q** Not necessarily? Might he have been reaching out to someone
23 else in the DA's office for some reason?

11:51:36 24 **A** You should ask him that.

11:51:38 25 **Q** Well, I'll ask you: Did you -- were you aware of any other

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1 prosecutor that he was working on cases with at this time in the
2 DA's office?

11:51:47 3 **A** I wasn't.

11:51:47 4 **Q** You weren't. Okay. Exhibit 137. Exhibit 137 is Beckcom's
5 parole application, and it's dated April 19th, 2002. Do you see
6 that?

11:52:07 7 **A** Should I have seen this before?

11:52:09 8 **Q** I'm asking you -- well, I'm asking you if you see this --
9 obviously --

11:52:12 10 **A** I've never seen this before.

11:52:14 11 **Q** You've never seen this before?

11:52:15 12 **A** I don't think so.

11:52:19 13 **Q** So you didn't fill this out for Mr. Beckcom?

11:52:21 14 **A** What?

11:52:22 15 **Q** I'm asking you: Did you fill it out for Mr. Beckcom?

11:52:24 16 **A** What is it?

11:52:25 17 **Q** It's his application for parole in the state case.

11:52:28 18 **A** You're asking me if I filled this out?

11:52:30 19 **Q** I am. I'm just asking if you filled it out for him?

11:52:33 20 **A** No.

11:52:33 21 **Q** Okay. Did you have any role in assisting him in applying
22 for parole in his state case in April of 2002?

11:52:42 23 **A** No.

11:52:49 24 **Q** If you go back to page 170 -- or Exhibit 170, same page we
25 were looking at, 63.

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A Same page?

Q Uh-huh. On April 24th, 2002, Beckcom again reaches -- or calls the Special Crimes unit. Do you see that?

A Not yet. What day?

Q April 24th, 2002.

A Okay.

Q And then Exhibit 186 --

A That was a two-minute call.

Q Yes, I see that. And my question to you --

A That doesn't mean he talked to anybody.

Q My question to you was: He called the phone number at the DA's Special Crimes unit on that date, right?

A He did.

Q Okay. So on April 17th, 2002, he called that number, correct?

A That's the one we did a while ago?

Q Yes.

A Yes.

Q On April 19th, he signed -- or filled out a parole application -- or someone filled out a parole application and dated it April 19th, 2002, right?

A I have no idea who did that.

Q Well, you'll agree that that Exhibit 137 is dated 2000 -- April --

A I don't know where --

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Q -- 19th, 2002?

A I don't know where you got that from. I've never seen that before. You can ask someone who has information about that to verify it. I can't.

Q Okay. I'm just asking you if the date on that is April 19th, 2002. Do you see that at the bottom?

A I don't know anything about that. I'm not going to answer anything about it.

Q And in Exhibit 170, we see that Beckcom again called that number at Special Crimes a few days later on April 24th, 2002, right?

A And it looks like he again didn't speak to anybody. It's a two-minute call.

Q You have no recollection, sitting here 15 years later, as to whether or not he spoke with anyone on that date, do you?

A I have enough sense to know that not much could get done in a two-minute phone call after he went through two receptionists, if not three.

Q Right. So if he had spoken with you, it would have been because you had called him on a unit manager's phone to return his call, right?

A No. No, not at all.

Q Aside from writing that letter to Mr. Foreman's prosecutor for the Herrero case --

A Mr. Foreman?

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Q Mr. Foreman's prosecutor, right. We discussed that earlier.

A Okay.

Q The letter to Ms. Batson. Did you do anything else in the way of a benefit for Mr. Foreman as a result of his assistance in either the Prible or the Herrero cases?

A The letter having to do with getting them all separated.

Q Okay. Did you have any charges against him dropped?

A Not that I remember.

Q That would have been -- needed to have been revealed, right?

A Yes -- no, he didn't testify for anybody ever.

Q So -- so because he didn't testify, in -- in your mind, you didn't need to reveal the fact that you had written a letter for him?

A Not in the Prible case, no. He nothing to do with the Prible case, Nathan Foreman.

Q I'll show you Exhibit 116. Exhibit 116 was the Brady motion filed by Prible's counsel pretrial. Do you see that?

A Yes.

Q Okay. Now, the defense wasn't required to file this motion, right? All this information -- Brady information should have been revealed by this time, right?

A Correct.

Q Okay. It's the state's burden to produce that information, right?

A Correct.

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1 Q Okay. On Section 2, 1B, and I know it's difficult to read
2 because of your notes, but you'll see it says one of the things
3 they asked you to reveal -- to disclose was the date, place and
4 manner of the state's contacts with this witness, meaning
5 Michael Beckcom, including a statement of how contact was first
6 initiated and with whom it was made. Do you see that?

7 A I see that.

8 Q Uh-huh. And did you tell defense counsel that contact was
9 actually first made with Nathan Foreman, Beckcom's cellmate?

10 A I don't believe that was the case.

11 Q You don't believe that you spoke with Mr. Foreman before you
12 spoke with Mr. Beckcom?

13 A That's not what you asked me.

14 Q I believe it is what I asked you, but I'll -- I'll rephrase
15 it.

16 Did you tell the defense that contact was actually first
17 made with Nathan Foreman, Beckcom's cellmate?

18 A I read this to be contact that Beckcom first made with me.

19 Q That's right. So did you -- okay. Did you reveal to the
20 defense that you had spoken with Mr. Foreman back in August 8th,
21 2001, he was -- he was Mr. Beckcom's cellmate?

22 A He wasn't his cellmate. He wasn't his cellmate then.

23 Q When did he become his cellmate?

24 A I don't know.

25 Q Okay. I thought you said earlier you didn't know that they

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1 were ever cellmates?

11:57:58 2 **A** I didn't. I just read it a while ago when I looked at
3 Tina's transcript from Beckcom's testimony, and that reminded me
4 of what Beckcom said back then.

11:58:06 5 **Q** Okay. But eventually he became Beckcom's cellmate prior to
6 this trial, right?

11:58:10 7 **A** No, I don't know if it was prior to the trial. I don't know
8 when it happened.

11:58:14 9 **Q** Okay. Number 1C in that exhibit, it asks for a list of all
10 cases in which Beckcom has appeared as a witness, been listed as
11 a witness, or volunteered to appear as a witness. Did you
12 disclose any other cases in which Mr. Beckcom was a witness for
13 you in response to this motion?

11:58:39 14 **A** A witness for me?

11:58:40 15 **Q** Yes.

11:58:42 16 **A** There was only the one.

11:58:44 17 **Q** He wasn't a witness for you in any other case that you
18 prosecuted?

11:58:47 19 **A** No.

11:58:48 20 **Q** I'm going to show you Exhibit 145. This is a probable cause
21 affidavit in the case of Danny Bible. That was a case you
22 prosecuted, right?

11:59:12 23 **A** It was.

11:59:13 24 **Q** And if you look at the next -- actually, the third page of
25 this printout, under active parties, it says, "Michael Beckcom,

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1 connection, previous bench warrant, witness for the
2 prosecution." Do you see that?

11:59:29 3 **A** What's your question?

11:59:32 4 **Q** So he was a witness for you in Mr. Bible's case --

11:59:35 5 **A** He was not.

11:59:35 6 **Q** -- as well?

11:59:36 7 **A** He was not.

11:59:36 8 **Q** He wasn't a testifying witness, maybe, but you had spoken
9 with him about Mr. Bible's case?

11:59:42 10 **A** No, ma'am. He -- he was bench warranted and connected to
11 that case when he was brought back so Jeffrey Prible wouldn't
12 know that he was brought back for Jeffrey Prible's case.

11:59:50 13 **Q** So you put a different name on the bench warrant?

11:59:52 14 **A** That could be the explanation for it.

11:59:55 15 **Q** Section E, "Agreements made with Beckcom concerning benefits
16 he would receive in exchange for testimony, including oral
17 agreements." Do you see that?

12:00:05 18 **A** Yes.

12:00:05 19 **Q** Now, in response to that motion, did you reveal to
20 defense -- the defense counsel for Mr. Prible that you had
21 arranged a meeting with Mr. Beckcom and Mr. Davi at
22 Mr. Beckcom's request?

12:00:20 23 **A** No. That's not what happened.

12:00:22 24 **Q** That's not what happened?

12:00:24 25 **A** No. I don't remember arranging a meeting with Mr. Davi. I

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1 don't remember Mr. Davi.

12:00:30 2 Q Okay. Ms. Siegler, in the Temple trial, you testified that
3 you deleted all your emails while at the DA's office; is that
4 correct?

12:00:42 5 A I think I testified that when I was done working on a given
6 e-mail and the to-dos were done, I deleted it.

12:00:49 7 Q And you also deleted -- did you also delete all the e-mails
8 a second time from your trash folder?

12:00:55 9 A Yes.

12:00:55 10 Q Okay. And you also deleted all the e-mails that you sent
11 from your account, right?

12:01:00 12 A Well, I don't know about that. I just didn't want them in
13 my in box where I had to look at them.

12:01:04 14 Q I'm going to show you Exhibit 154. Do you have
15 Exhibit 154-1 still? That's the manual.

12:01:13 16 And it says, "The Attorney General of Texas has held that
17 electronic mail is public information under the Texas Open
18 Records Act." Do you see that?

12:01:19 19 A I do.

12:01:20 20 Q So you had a duty to preserve your e-mails on your DA
21 account, didn't you?

12:01:25 22 A I assumed the office was doing that.

12:01:28 23 Q So you assumed, even though you, personally, were deleting
24 them, that the office was saving them?

12:01:33 25 A Yeah. They had everybody's e-mails.

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Q And were -- and they would be somewhere at the DA's office?

A On the server.

Q I'll show you Exhibit 110. This is a privilege log from --

THE COURT: I'm sorry. How much is left?

Q -- the DA's office --

MS. SCARDINO: I think maybe 20 minutes, Your Honor.

THE COURT: Twenty minutes?

MS. SCARDINO: I think maybe, yes, sir.

THE COURT: We're going to have to delay your
1:00 o'clock witness or take him out of order.

MS. SCARDINO: Okay.

THE COURT: I've got a wiretap application I got to go
deal with right now. We'll --

MS. SCARDINO: Should we take lunch?

THE COURT: -- break until 1:00 o'clock.

MS. SCARDINO: Okay.

(Lunch recess taken from 12:02 p.m. to 1:06 p.m.)

THE COURT: Keep your seats, everybody. That's all
right.

Mr. Rytting, did you have something you want to say?

MR. RYTTING: No, Your Honor.

THE COURT: You want to go ahead and finish the --

MS. SCARDINO: Yes, Your Honor.

THE COURT: -- depo? Okay. Let's do that, then.

MS. SCARDINO: Is Arturo here? Can you turn up the

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1 volume?

13:06:22 2 **THE CASE MANAGER:** Should be on.

13:06:45 3 **MS. SCARDINO:** One second while we figure out what's
4 going on.

13:06:47 5 *(Video playing.)*

13:07:31 6 **MS. SCARDINO:** Can you hear it? It sounds like it's
7 not hooked up to your system for some reason.

13:07:38 8 **THE CASE MANAGER:** Try unplugging it and plugging it
9 back in.

13:07:42 10 **MS. SCARDINO:** Okay. Sorry about that.

13:07:51 11 *(Video deposition of Kelly Siegler continued as follows.)*

13:07:51 12 **Q** And that a search for e-mails related to this case, in all
13 of the results that came up, I believe there's only one from
14 your account.

13:08:07 15 So my question to you is if they do have them at the DA's
16 office, how do we find those e-mails? Because the DA's office
17 could not find them. So I'm asking you where were they stored,
18 to your knowledge?

13:08:19 19 **A** Well, first of all, I don't know that there would be any
20 more. I don't know why I would have e-mails specifically
21 dealing with Prible. I'm trying to think of why I would.
22 Because back then, we did not e-mail lawyers like they do today.
23 We didn't.

13:08:34 24 **Q** In 2001?

13:08:35 25 **A** Yeah.

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1 Q Well, in the Temple case, there were e-mails, but you
2 testified that you deleted your e-mails, right? There are
3 e-mails from others, right?

4 A Right.

5 Q And in this case, there are a lot of e-mails from other
6 people, but none from you, right? So other lawyers in the
7 office were using e-mail at that time?

8 A I meant defense lawyers, sorry, between prosecutors and
9 defense lawyers.

10 Q I'm talking any e-mails that you sent or received about this
11 case --

12 A Okay.

13 Q -- where would they be located if you deleted them? Where
14 could we find them?

15 A The DA's was would have them. If there were any more, they
16 would have them. They would be here. There must not be any
17 more. That doesn't surprise me.

18 Q Your theory at trial was that Mr. Beckcom and Mr. Prible
19 came into contact coincidentally at FCI Beaumont, right?

20 A I don't remember exactly what I said about that.

21 Q I'm going to show you your opening statement.

22 A Okay.

23 Q An excerpt that's Exhibit 195. Page 78, line 21, and it
24 said -- and -- and you say, "You're also going to hear testimony
25 from a man named Michael Glen Beckcom. Michael Beckcom is a

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1 federal inmate at the Beaumont medium federal penitentiary.

2 He's going to tell you about how he came to meet and know Jeff
3 Prible." Do you see that?

13:10:00 4 **A** I do.

13:10:01 5 **Q** Okay. So it was important at trial to portray the meeting
6 of Mr. Prible and Mr. Beckcom as coincidental, right?

13:10:10 7 **A** Not really.

13:10:11 8 **Q** Okay.

13:10:12 9 **A** I didn't say that anywhere.

13:10:14 10 **Q** Okay. So you'll disagree that that was your theory at
11 trial?

13:10:17 12 **A** That's not what you just read to me, that I said anything
13 about contact.

13:10:23 14 **Q** Well, in your opening statement, you tell the jury that
15 Michael Beckcom is going to tell them how he came in contact
16 with Mr. Prible, right?

13:10:33 17 **A** Yes.

13:10:33 18 **Q** And so because you put that in your opening statement, that
19 initial contact is pretty important, right?

13:10:40 20 **A** Not necessarily.

13:10:42 21 **SPEAKER:** Objection.

13:10:43 22 **BY MS. SCARDINO:**

13:10:44 23 **Q** Okay. And Mr. Beckcom testified at trial that the
24 confession that he received -- that he heard from Mr. Prible was
25 heard in the presence of Nathan Foreman as well. Do you

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1 remember that at that time?

13:10:59 2 **A** I do not remember the specifics of the trial.

13:11:01 3 **Q** Okay.

13:11:02 4 **A** It was 15 years ago.

13:11:03 5 **Q** Okay. Let me show you Exhibit 109-4. Actually, I want to
6 get you, actually, to read Exhibits 109-2, 109-3 and 109-4 into
7 the record because they're your work product notes, I believe.

13:11:19 8 **A** What is this?

13:11:20 9 **Q** This was produced by order of the Court after the Court's *in*
10 camera review of your work product in this case.

13:11:31 11 And I want to bring your attention to the middle of that
12 page, a little -- and it says, "Defendant in Beaumont pen." Do
13 you see that?

13:11:44 14 **A** I see a defendant -- yes, "Defendant in Beaumont pen."

13:11:47 15 **Q** And so this -- these notes look like they were taken before
16 Mr. Prible was charged, do you agree?

13:11:55 17 **A** Yes. These look like some initial to-dos or random thoughts
18 I had.

13:12:00 19 **Q** Okay. And if you look at the following page, if you look in
20 the middle of the paragraph, it says, "Potential federal prison
21 roommate." Do you see that?

13:12:12 22 **A** I do.

13:12:14 23 **Q** Okay. So before you were -- you had accepted charges
24 against Mr. Prible, you were already contemplating setting him
25 up with a federal prison roommate; is that correct?

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13:12:26 1 **A** No. That's not what that means.

13:12:27 2 **Q** The jury wouldn't have believed that coincidental contact
3 theory if they had known that you had thought about putting him
4 with a federal prison roommate before you even charged him,
5 right?

13:12:37 6 **A** That's not what that means. Do you want to know what it
7 means?

13:12:43 8 **Q** Another theory that you had at the trial was this theory
9 that DNA disappears immediately once it's in an oral cavity; is
10 that correct? Do you remember that?

13:12:56 11 **A** I don't remember exactly what we said, no.

13:12:58 12 **Q** Okay. Well, the reason this -- this theory was important
13 was because the most damning piece of evidence against
14 Mr. Prible was the DNA -- his DNA found in the victim's mouth.
15 Do you remember that?

13:13:10 16 **A** I do.

13:13:10 17 **Q** Okay. And so it was crucial that the prosecution refute
18 Mr. Prible's story of consensual sex, which is what he told --
19 volunteered to the detectives within hours of the murders,
20 right?

13:13:25 21 **A** I don't remember what he said initially.

13:13:26 22 **Q** Okay. But you agree that this theory about the semen
23 disappear -- or DNA disappearing immediately was something that
24 was important to the trial?

13:13:37 25 **A** I don't know that we ever used the word "disappear

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1 immediately."

13:13:41 2 Q Okay. I'm going to show you your opening statement again,
3 page [sic] 195. Do you have it in front of you?

13:13:49 4 A Yes.

13:13:51 5 Q Okay.

13:13:53 6 A It's the yellow one. Do you need it?

13:13:55 7 Q No. I think those are all -- thank you.

13:13:57 8 Look at page 82, line 18.

13:14:06 9 A Okay.

13:14:06 10 Q Okay. And I'll read it for you while you're reading along.

11 "The evidence will tell you -- the compelling evidence will tell
12 you that the reason for that is that found -- after the
13 autopsies were done, especially the autopsy on Nilda Tirado,
14 found in her mouth was the semen, the DNA of Ronald Prible. And
15 the DNA expert will tell you what the odds are, what that means
16 exactly statistically, the fact that his DNA is found in her
17 mouth. But the most compelling thing he's going to tell you is
18 that you know what, when semen is in somebody's mouth, in a
19 lady's mouth, it goes away in minutes. It goes away with a
20 small swallow. That's what the evidence is about in this case,
21 and you're going to know from the testimony all about what kind
22 of a man could ejaculate in a woman's mouth after he executed
23 her husband minutes before he executed her, minutes before he
24 could find gasoline to set her on fire and what kind of a man
25 could have walked out of the house with it smoking and burning

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1 knowing three little babies were asleep in their bed. That's
2 this kind of man, and he's guilty of capital murder."

13:15:04 3 Now, does this refresh your memory about the theory of the
4 prosecution being that DNA disappears immediately once it is in
5 a woman -- is in a victim's mouth?

13:15:15 6 **A** I did not use the words "disappear immediately."

13:15:17 7 **Q** Okay. "It goes away in minutes" is the words that you
8 stated, right?

13:15:23 9 **A** That's what I said.

13:15:28 10 **Q** And that was also the testimony that you elicited from the
11 DNA expert in this case, Mr. Watson, correct, that DNA -- the
12 fact that he found any DNA in Ms. -- in the victim's mouth -- or
13 the fact that any DNA was found in her mouth meant that the
14 victim had been executed immediately after the assailant had
15 ejaculated; is that correct?

13:15:52 16 **A** I don't think that he could testify to that exactly, but
17 you'd have to show me his testimony.

13:15:56 18 **Q** Okay. If you can look at Exhibit 109-4 -- do you have 109?

13:16:04 19 At the very top there in your handwriting, it says, "Pam
20 McInnis, semen lives up to 72 hours." Do you see that?

13:16:12 21 **A** I do.

13:16:13 22 **Q** Now, who is Pam McInnis?

13:16:16 23 **A** She is a DNA analyst and was the head of the crime lab for
24 Pasadena --

13:16:23 25 **Q** Okay.

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13:16:23 1 A -- and Harris County. She was connected to both.

13:16:25 2 Q And so you consulted her about this question as to how long
3 semen could live in the oral cavity, right?

13:16:30 4 A I at least started with her, yes.

13:16:34 5 Q Did you reveal to the defense counsel in Mr. Prible's case
6 that you spoke with Ms. McInnis and that she told you semen
7 could live up to 72 hours?

13:16:47 8 A I think that was part of the trial. Seventy-two hours is in
9 the trial.

13:16:52 10 Q My question to you is: Did you ever reveal to Mr. Prible's
11 counsel that you had spoken to Pam McInnis, and she had told you
12 that semen lives up to 72 hours?

13:17:03 13 A I don't remember.

13:17:05 14 Q You mentioned you had Michael Beckcom bench warranted in the
15 Bible -- in the Danny Bible case?

13:17:12 16 A No. I mentioned that Michael Beckcom was bench warranted
17 and attached to the Danny Paul Bible case.

13:17:19 18 Q Okay. And how do you do that? What type of documents do
19 you have to file to do that?

13:17:23 20 A The court -- court coordinators are in charge of bench
21 warrants.

13:17:27 22 Q But you instruct the court coordinator why they're being
23 bench warranted --

13:17:31 24 A Yes.

13:17:31 25 Q -- correct?

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A Yes.

Q And then they file some sort of document with the court?

A I don't really know what they do. That's a court coordinator function.

Q But it comes out as a court order to move somebody from one place to the courtroom or to the -- to the jail, right?

A It does.

Q Okay. And you knew at the time that he was not going to be a witness in the Danny Bible case?

A That's correct.

Q Okay. So it was a false misrepresentation to the Court and to the court coordinator?

A No.

MR. DOYLE: Objection.

BY MR. RYTTING:

Q What was true about that?

A That we needed Michael Beckcom brought to Harris County, and we needed to make sure that Jeffrey Prible and Michael Beckcom did not run into each other for lots of reasons, to protect the integrity of the case and, also, for the safety purposes for both of them.

Q Okay. And isn't there other means to do that without having bench warrants somebody as -- and attach them as a witness to the case?

A No. If I would have attached Michael Beckcom to the Jeffrey

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1 Prible case, they would have been brought together on the chain
2 each and every time they were brought up. That would have been,
3 really, a stupid thing to have happen.

13:18:38 4 Q You can't have them bench warranted at different times?

13:18:40 5 A I did have them bench warranted at different times. That's
6 why it's connected to Danny Paul Bible.

13:18:45 7 Q No, but in the Prible case.

13:18:47 8 A No. They get -- it gets all messed up. The jail can't keep
9 it straight.

13:18:51 10 Q And is this a common practice by Harris County district
11 attorneys?

13:18:55 12 A Yes.

13:18:55 13 Q And so the result is that when, say, someone gets a post
14 conviction case and has to investigate it, they're -- they look
15 at cases and find -- and they cannot be sure if a witness is
16 attached for one reason or another to a case because of the
17 Harris County district attorney's policy?

13:19:13 18 A That would be a complication, yes.

13:19:17 19 Q And did you tell Mr. Wentz and Mr. Gaiser about your -- the
20 results of your interview with Nathan Foreman?

13:19:30 21 Just to end up, just because I'm curious, you mentioned
22 that there were a number of lies in the -- in the application --
23 or in the petition -- Prible's petition, that there are some
24 lies?

13:19:44 25 A I did.

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13:19:44 1 Q Okay. And that means there's -- there must be some faults
2 in that petition that you think are false, correct?

13:19:51 3 A I do.

13:19:52 4 Q Okay. And can you name one or two of them that you think
5 are false?

13:19:57 6 A There's not much truth in it.

13:19:59 7 Q Okay. Can you name one that sounds out as being false?

13:20:03 8 A Well, the overarching lie is that I orchestrated a ring of
9 informants from the Beaumont federal prison system. That is a
10 lie --

13:20:13 11 Q Okay. All right. I'm just --

13:20:14 12 A -- that you made up --

13:20:16 13 Q No. No.

13:20:17 14 A -- and you theorized and you pieced together and you
15 represented to a federal judge and defamed my reputation, and
16 it's completely wrong and unethical and false and --

13:20:28 17 Q What is the basis for you thinking -- for your belief that
18 we've been -- we don't believe that?

13:20:33 19 A You have no evidence to support that. That is a lie. You
20 have not one shred of evidence to support it from anybody.

13:20:38 21 Q Okay.

13:20:40 22 A It didn't happen.

13:20:40 23 Q Did you not -- did you not read the transcript of the
24 interview with Carl Walker?

13:20:44 25 A I don't even know who Carl Walker is, and he's a bigger liar

Video Deposition of Kelly Siegler

than Nathan Foreman.

Q Okay.

A Your own investigative interview of Carl Walker was a joke --

Q Okay. So --

A -- if you analyze the interview itself.

Q So --

A Read it carefully.

Q I'm just saying --

A He didn't even know my name. He wasn't even sure I was a female.

Q Okay.

A And you want to pretend like Carl Walker is the crux of your conspiracy of informants that I masterminded and orchestrated --

Q I'm saying did you --

A -- in federal prison?

Q Did you read -- did you read his -- the transcript of his interview?

A I read -- it was about six pages long.

Q No, it was about 30 pages long.

A Maybe I read 30. I don't remember. It was the one where he was interviewed by --

Q I just asked -- Ms. Siegler, I just asked you a question.

MR. DOYLE: Let her -- let her finish.

BY MR. RYTTING:

Video Deposition of Kelly Siegler

Q Did you read it?

A I think I did, yes.

Q Okay. And you've also read the affidavit of Nathan Foreman?

A I don't know if I read an affidavit. How long is that one?

Q That's about four pages in the Prible case --

A I think I read that. I think I read that.

Q -- and three pages in the Herrero case, and you commented on that in your own affidavit.

A Say that again.

Q And you commented on his affidavit in the -- in the Herrero case.

A Okay. That's the affidavit you're talking about --

Q Right.

A -- right?

Q So I have -- so there is evidence. You -- you disagree with the credibility of that evidence, don't you?

A No, I disagree with your making a false impression to a federal judge in a case this important and making up lies and saying that I orchestrated a ring of informants in a federal prison system and that I told them what to say and caused them to lie in not just one or two or three, but four different cases. That is a lie.

Q No. There was -- there was -- the claim was that you did -- that you were aware of a ring of informants and that --

A And I told them what to say, and told them to lie --

Video Deposition of Kelly Siegler

Q That you were aware of a ring of informants. Wasn't --

A -- and I fed them information.

Q Wasn't that -- wasn't that the petition?

A It was a whole lot more than that, and you know it.

Q And that -- that some of the key facts were learned from you by -- according to our witnesses and our affidavits and our taped statements?

A Your witnesses' affidavits were lies.

Q Okay. You can take that position, and it contradicts what you -- in both cases, it contradicts precisely what you claim the State's -- the real truth is and what the State's -- what the State has argued; isn't that correct?

A You have not one shred or iota or piece of credible evidence from a credible witness that supports any of those allegations.

Q And these are the type of witnesses that you used to put people on death row?

A I'm calling you a liar, sir.

Q And I'm calling you one.

A I didn't go to a federal court --

Q You used -- you used Michael Beckcom to put Jeffrey Prible on death row.

A That's not the only thing that put Jeffrey Prible on death row, and you know it.

Q You used Moreno, who we now know lied to you.

A For Prible?

Video Deposition of Kelly Siegler

1 Q No. In the -- in the Herrero case, who we now know lied to
2 you.

3 A He did not lie.

4 Q So if you could start with that first page.

5 A At the top it says, "Prible," circled, "Montgomery County."
6 I can't read that word. "To see if Eddie" --

7 Q Is that "Gomez"?

8 A I think that's "Gomez."

9 I can't read the line under it. "Made -- called,"
10 underneath the line, "Charged with five bank robberies and" --
11 or "six" -- I can't tell -- "banks." I don't know what that
12 says after it. Next line. I don't know what that says.

13 Next line, "Here comes Prible." I can't read that.
14 "Defendant dropped. Murder - no evidence. People" -- I don't
15 know if that says "cut" or "out him." I can't read the rest.

16 Q Do you recall when you took these notes?

17 A No. I don't know where this is from. I don't know where
18 this is from.

19 It's not the eyesight.

20 **MS. SCARDINO:** -- and write --

21 A It's the copy. It's not the eyesight. I can't read my own
22 writing.

23 **BY MS. SCARDINO:**

24 Q Okay. So you need a more legible copy than the one that --

25 A No. It won't matter. It's my scratchy handwriting that's

Video Deposition of Kelly Siegler

the problem.

Q So your testimony is you can't read your own handwriting?

A Happens a lot because I write so fast, trying to take notes, and I can't do a good job, which is why I end up not taking notes, because it doesn't do me any good.

(Conclusion of video deposition.)

THE COURT: Does that conclude the depo?

MS. SCARDINO: Yes, Your Honor.

THE COURT: Okay. Do you have another witness?

MS. SCARDINO: Yes, Your Honor.

THE COURT: He's live?

MS. SCARDINO: Yes, Your Honor. Terry Gaiser.

THE COURT: Okay.

MS. SCARDINO: Could someone step out?

THE COURT: And go get him?

MS. SCARDINO: I'm going to sit here, Your Honor, if that's okay.

THE COURT: That's fine.

Yes, sir, if you want to make your way up here, we're going to have you in the seat nearest me.

Before you take your seat, sir, Mr. Rivera will administer the oath, if you will raise your right hand.

(Witness sworn.)

THE COURT: Try to adjust the mic so you can speak right into it, if you can, sir.

Ms. Scardino Direct of Terry Gaiser

THE WITNESS: I've got kind of a low voice, Judge.

THE COURT: I think we can handle it. I think we can.

THE WITNESS: All right. Does that work?

THE COURT: That'll work.

TERRY GAISER, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MS. SCARDINO:

Q Good afternoon, Mr. Gaiser.

A Good afternoon.

Q You were Mr. Prible's trial attorney in the capital murder case; isn't that correct?

A I certainly was.

Q Okay. Can you tell us your background? How long have you been practicing law?

A Oh, I've been practicing law since 1972.

Q Okay. And has that been entirely as a defense attorney, a criminal defense --

A Yes, it has.

THE COURT: You must be in state court. I don't recall seeing you over here.

THE WITNESS: Well, I was in your court once, Judge.

THE COURT: Once. Welcome back. Welcome back.

THE WITNESS: On a pornography case.

THE COURT: On a pornography case, okay.

BY MS. SCARDINO:

Ms. Scardino Direct of Terry Gaiser

Q So you've been a criminal defense attorney for about 47 years. And has that always been in the Houston area?

A Well, Houston and environs.

Q So you've had hundreds of cases against the Harris County District Attorney's Office, I would imagine?

A I have hundreds, if not thousands. I've never counted.

Q Okay. And you have about 47 years of experience trying to get discovery from the Harris County District Attorney's Office?

A I have.

Q I want to take you back to the years 2001 and 2002. This was long before the Michael Morton Act, right?

A Correct.

Q Okay. And --

A Discovery was a lot different back then.

Q And do you recall approximately when you were appointed to represent Mr. Prible in his capital murder case?

A I believe it was September of 2001.

Q Okay. Does September 28th, 2001 --

A That sounds right.

Q -- sound correct?

A Yes.

Q Okay. And was this your first capital murder case?

A No, no. I had had probably 10, 12 capital cases before that.

Q Okay. Who was the prosecutor in Jeff's case?

Ms. Scardino Direct of Terry Gaiser

A Kelly Siegler and Vic Wisner.

Q Okay. Was this your first case against Kelly Siegler?

A Well, I had dealt with Kelly Siegler in court, but I had never tried a case against her. I mostly just -- mostly just third degree felonies, I'm sure.

Q Okay. When you received an appointment like this in a capital murder case, what would have been the first thing you would have done?

A I can't remember in this case, but, normally, I would go meet with the client.

Q Okay. Would you also request to see the DA's file?

A Of course. I would.

Q And how would you go about reviewing the DA's file? How that would process work?

A Back then -- it's totally different now, but back then, you would make an appointment to go to the prosecutor's office, and they would bring out the file and put you in a separate room, you know, whether it was a box of files or boxes of files, and you would go through the files yourself or with cocounsel.

Q And would you be able to look at everything that the DA's office had in a given case? Would everything be included in that file?

A Well, what was in that file was what they put in the file. You know, I was never aware that there may be other things that weren't in that file.

Ms. Scardino Direct of Terry Gaiser

Q Okay. As far as you knew, was it an open file policy at the DA's office at that time?

A Pretty much. There were some cases where they closed the file. Where an attorney had done something that angered them for some reason, they would close the file.

Q Okay. Do you remember that being true in Mr. Prible's case?

A I saw the file in Mr. Prible's case. It was not a closed file in that sense.

Q Okay.

THE COURT: Would you say your relationship with the DA's office was cordial?

THE WITNESS: Yes, sir.

THE COURT: Remains so?

THE WITNESS: I hope so, yes, Your Honor.

BY MS. SCARDINO:

Q Was it customary, when you would look in the DA's file, for the attorney's work product to be included in that file?

A No. No. They would not put work product in there.

Q Okay.

A To -- that was not part of their open file policy.

Q Okay. So your understanding, when you went to look at the file, was that it would be everything except the work product; is that accurate?

A Supposedly, yes. That was my understanding.

Q And was that your understanding in Mr. Prible's case as

Ms. Scardino Direct of Terry Gaiser

1 well?

13:31:56 2 **A** Yes.

13:31:58 3 **Q** Do you recall seeing notes of Ms. Siegler and her
4 investigators in Mr. Prible's case file?

13:32:04 5 **A** No, I did not.

13:32:09 6 **Q** Back then, in 2001 and 2002, would a prosecutor provide
7 defense attorneys, such as yourself, with a witness list before
8 trial?

13:32:18 9 **A** At times, but that was not the general practice. You would
10 usually -- you would have to look for what's -- what subpoenas
11 had been filed in the district clerk's office to find -- to
12 discover the witnesses, usually.

13:32:35 13 **Q** When you went in to review a copy of the file at the DA's
14 office, were you allowed to make your own copy of anything in
15 the file?

13:32:42 16 **A** No. No. No -- no, I don't -- in most cases, no. If there
17 was something in the file that was public record that I -- I
18 could go get from the clerk's office, I'd ask, you know, "Can I
19 just get a copy of this now so I don't have to go to the
20 district clerk's office?"

13:32:58 21 **Q** Okay.

13:32:58 22 **A** But as a general rule, you would not be allowed to copy
23 anything in the file.

13:33:03 24 **Q** You just had to sit in the room and make notes?

13:33:05 25 **A** That's correct.

Ms. Scardino Direct of Terry Gaiser

1 Q And do you recall that -- if that was the case in
2 Mr. Prible's situation when you were -- when you went to review
3 his file?

4 A Certainly, yes. That was the case.

5 Q After you were appointed to represent Mr. Prible and you had
6 had an opportunity to review the file at the DA's office, what
7 was your take on the state's evidence against Mr. Prible?

8 A Well, the state's case -- in my opinion, the state's case
9 was -- there were two major points in the state's case that had
10 to do with DNA found in -- a sperm specimen found in the female
11 victim's mouth, and -- and that later connected to Jeff, and the
12 testimony of a witness from the federal correctional facility in
13 Beaumont, Michael Beckcom. Those were the two -- two main --
14 that was the thrust of their case.

15 Q Those two issues?

16 A I mean, there were some other things from -- the firearms
17 evidence, for instance, was -- was also -- the fact that
18 firearms had been found in Jeff's parents' house, that the state
19 wanted to make the case that one of those firearms could have
20 been used in the -- in the murders. But, you know, apparently,
21 there were -- in my expert's view, there were literally 20 or 30
22 different weapons that could have fired the bullets that were
23 fatal in this case.

24 Q Okay. So you recall that other than that ballistics
25 evidence, the heart of the state's case was the informant and

Ms. Scardino Direct of Terry Gaiser

the DNA evidence?

A Oh, definitely. Yes.

Q Okay. And do you recall what the prosecution's theory was regarding the DNA?

A Well, based upon what they argued in the -- in the trial was that -- that Jeff had ejaculated in the female decedent's mouth and shot her right away after doing that was their theory of the case.

Q Yeah.

A The testimony at trial -- well, you're familiar with the testimony at trial.

Q Okay. And do you remember the story about the jailhouse informant and how he came in contact with Mr. Beckcom -- I mean, with Mr. Prible?

A Well, my first knowledge of him came from -- from Kelly Siegler. There was a -- I don't remember exactly when I learned of him, but she had given me, at one point, a -- a handwritten statement that he had given.

Q Okay. And by "he" --

THE COURT: Was use -- in major crimes, was the use of prison informants unusual or fairly common or somewhere in between?

THE WITNESS: In the Harris County District Attorney's Office, it was pretty common.

THE COURT: Pretty common?

Ms. Scardino Direct of Terry Gaiser

THE WITNESS: Yes, sir.

BY MS. SCARDINO:

Q Do you remember how -- approximately how close to trial you received this -- this handwritten letter from Mr. Beckcom?

A Oh, I'm sure it was sometime before trial, but I don't know exactly when.

Q Okay. Do you think it would have been weeks before trial or months before trial? Can you speculate -- or can you not speculate, but --

A Well, I don't want to speculate, but I -- I was aware of the handwritten statement that he had given prior to trial.

Q Prior to trial.

And the case went to trial in October of 2002. Do you remember filing any pretrial motions?

A I -- we filed a load of motions that -- as I remember. We filed several motions on the constitutionality of the death penalty scheme in Texas and discovery motions of -- a variety of discovery motions.

Q Okay. And I want to talk about some of those discovery motions. Exhibit 109 -- can you see on your monitor there -- is a Brady motion that you filed.

A Yes.

Q Does that look familiar?

A Yes.

Q Okay. That's the -- you titled it, "The Motion and Request

Ms. Scardino Direct of Terry Gaiser

for Production of Evidence Favorable to the Accused"?

A Yes. Yes, ma'am.

Q In Section 21B of that motion, you ask for the date, place and manner of the state's contacts with Beckcom, including how contact was first initiated and with whom it was made. Do you see that?

A Yes.

Q Okay. Why did you want this information?

A I wanted -- well, as the fact that -- that he was an informant in the case made it important to know, from the standpoint of his credibility, whether he had come forward seeking some sort of remuneration or something in exchange for his testimony as to -- as to -- or whether the -- and how many times the contact had occurred were -- would be important in determining that also.

But that would go to his credibility.

Q And it was also important for you to know who made contact with Beckcom in -- in the DA's office, which side reached out to the other?

A Of course, yes.

Q Okay.

A The -- I mean, that bore on the same issue of his credibility in terms of what he wanted for his testimony or whether they had gone to him seeking him out to -- to groom him as a witness.

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13:39:27 1 Q Okay. And the Court -- do you remember pretrial hearings --
2 a pretrial hearing on September 10th, 2002, when they took up
3 this Brady motion?

13:39:38 4 A I -- you'll have to help me because I, you know -- I -- it's
5 been 18 years.

13:39:45 6 Q Okay.

13:39:46 7 A But I would have some memory of that, yes.

13:39:48 8 Q Okay. Well, I'm going to post Exhibit 70 at pages 4 through
9 5. This is a transcript from that hearing on the Brady motion.
10 Can you read that?

13:40:05 11 And it says, Number B, which is the provision that I just
12 made -- or read in the Brady motion. Number B has to do with a
13 date, time, place and manner of the state's contacts with this
14 witness, Beckcom, including a statement of how the contact was
15 first issued and with whom it was made.

13:40:26 16 A Well, I remember I was interested, for the same reason, as
17 to who had initiated the contact or whether they had initiated
18 it. How it came about was important to --

13:40:38 19 Q Right.

13:40:38 20 A -- bearing on -- on his credibility.

13:40:41 21 Q And you'll see Ms. Siegler responded, "Judge, and I don't
22 think I'm required to provide that to him. If they want to ask
23 him on cross-examination how many times I've met with him, how
24 we first came in contact with each other, I think they get to do
25 that. But I don't think I have to sit down and write a

Ms. Scardino Direct of Terry Gaiser

statement to the defense as to how I came in contact with

Mr. Beckcom." Do you see that?

A Yes, I do.

Q Now, why were you -- why did you ask, in open court, for the prosecutor to provide you with this information rather than just Beckcom -- asking Beckcom for it on cross-examination?

A At that point, Ms. Siegler is asking me to -- to believe in her witness, that her witness is credible on that point, that -- that I couldn't possibly cross-examine him if I didn't have the information of when and where they met and who initiated the contact.

Q And did you have -- was his credibility already shot, in your mind, based on the fact that he was a prison informant?

A Well, yes, you know. And later I did research on Mr. Beckcom and -- and dealt with his credibility.

Q Uh-huh.

I also want to post Exhibit 70 at pages 5 through 6. On this same issue, Ms. Siegler stated, "Judge, I'll agree to tell Mr. Gaiser how we came into contact and the times that we've met. I don't remember the dates. I didn't take any notes. And the best that I can remember, I'll let him know what they are, but I'm not going to write it all down. He can come to my office, and I'll sit down and tell him what I can remember."

Do you see that?

A Yes, I do.

Ms. Scardino Direct of Terry Gaiser

1 Q What did Siegler tell you about how she came into contact
2 with Beckcom?

3 A Well, I believe, if my memory's correct, it was the
4 handwritten note from Mr. Beckcom that somehow came into her
5 hands. It was -- I was never led to believe that she had made
6 contact with him, but it was always, he had made contact with
7 her.

8 Q Did Ms. Siegler tell you that she had been communicating
9 with Beckcom's cellmate, Nathan Foreman, since way back in
10 August 2001 before Prible was indicted?

11 A No. No, she did not.

12 Q Did she tell you --

13 **MS. MIRANDA:** Objection, Your Honor, that actually
14 misrepresents the facts in this case.

15 **THE COURT:** I'll let you bring that out in cross.

16 **MS. MIRANDA:** Okay.

17 **BY MS. SCARDINO:**

18 Q Did she ever tell you that she had determined that
19 Mr. Foreman was lying about hearing Mr. Prible confess?

20 A No.

21 Q She didn't tell you about him at all?

22 A Well, I knew of his existence because he was mentioned in
23 the -- in Beckcom's handwritten statement.

24 Q And beyond that, did Ms. Siegler tell you anything about
25 Mr. Foreman?

Ms. Scardino Direct of Terry Gaiser

1 **A** Oh, not to -- not that I can remember.

2 **Q** Did she ever tell you or mention the name Jesse Moreno to
3 you?

4 **A** No.

5 **Q** You hadn't heard that name?

6 **A** No, not -- not till I met with the lawyers recently.

7 **Q** Okay. I'm going to show you -- back to Exhibit 109.

8 **MS. SCARDINO:** Actually, you can pull up 70 at 6
9 through 7.

10 **BY MS. SCARDINO:**

11 **Q** But another request you made in that Brady motion was a copy
12 of all statements made by Beckcom and communicated to the state,
13 including notes of any conversations had with Beckcom by any
14 agent of the state.

15 And you stated in court, "We've been supplied with a
16 written statement that he made and been told by Ms. Siegler that
17 that's the only written statement they have." And that's the
18 written -- that's the handwritten statement that you're
19 referring to?

20 **A** Yes. Yes.

21 **Q** And Ms. Siegler says, "That's correct, Judge. And again,
22 like we've talked about once before, I've given up Mr. Gaiser
23 the statement Beckcom wrote up for me as to his communications
24 with Prible and how they came into contact. I've already
25 provided that to him, and it's still our position that any notes

Ms. Scardino Direct of Terry Gaiser

1 that either myself or Johnny Bonds made when we went to visit
2 Michael Beckcom is work product."

13:44:55 3 Do you see that?

13:44:56 4 **A** Yes.

13:44:57 5 **Q** And that comports with your recollection of reviewing the
6 file, that the work product was not available to you, correct?

13:45:04 7 **A** That's correct.

13:45:05 8 **Q** Okay. And the Court says, "I agree. So I will grant it as
9 to the witness statement that's been described in the record,
10 not as to notes made by Ms. Siegler or Mr. Bonds."

13:45:18 11 Now, my question to you is: Did Ms. Siegler ever provide
12 you with Beckcom's statement regarding an inmate named Anton
13 Davi? That's Exhibit 95.

13:45:32 14 **A** I --

13:45:32 15 **MS. MIRANDA:** Objection, Your Honor. Again, she's
16 mischaracterizing the evidence in this case.

13:45:36 17 **THE COURT:** Okay. I'll let you bring that out in
18 cross.

13:45:42 19 All she did was ask, "Did Ms. Siegler ever provide you
20 with Beckcom's statement regarding an inmate named Anton Davi?"

13:45:49 21 **MS. MIRANDA:** All right. But there's absolutely no
22 statement in the record. And I understand I can bring out
23 certain things at cross, but there is no statement in the
24 record --

13:45:56 25 **THE COURT:** Well, then the witness can say he's aware

Ms. Scardino Direct of Terry Gaiser

of no such statement. That's fine.

MS. SCARDINO: Okay. I can rephrase it, Your Honor.

THE COURT: Okay.

BY MS. SCARDINO:

Q Did Ms. Siegler ever provide you with this document,
Exhibit 95?

(Witness reviews document.)

THE COURT: If you remember.

THE WITNESS: No. No, I don't remember.

THE COURT: Don't remember?

THE WITNESS: No. I have never seen that till --

THE COURT: You've never seen it?

THE WITNESS: No, not until that was presented to me
when they were preparing me for testimony.

THE COURT: Okay. All right.

BY MS. SCARDINO:

Q And you see that at the bottom -- do you see who that letter
is signed by?

A Michael Beckcom.

Q Okay. Do you consider that a statement of Mr. Beckcom?

A I certainly do.

Q Okay. Another thing you asked for in your Brady motion
are -- were agreements made with Beckcom concerning benefits he
would receive in exchange for testimony, including oral
agreements. Do you remember making this request?

Ms. Scardino Direct of Terry Gaiser

13:46:56 1 **A** Yes.

13:46:57 2 **Q** Okay. And you also filed a motion to require the state to
3 reveal agreements, which is basically the same thing. You
4 basically asked for this twice, right?

13:47:07 5 **A** Yes.

13:47:08 6 **Q** It was pretty important?

13:47:09 7 **A** Yes, of course.

13:47:10 8 **Q** Okay. In that motion is Exhibit 74.

13:47:15 9 Now, why did you -- we'll bring it up.

13:47:19 10 Why did you file this motion?

13:47:22 11 **A** Well, I -- you know, I'm constitutionally entitled to know
12 for -- for purposes of -- of testing his credibility on -- on --
13 in confronting and cross-examining him what sort of deal he's
14 made with the government in exchange for his testimony.

13:47:42 15 **Q** And did you specifically limit your requests in this motion
16 to agreements that the state had made with Beckcom?

13:47:50 17 **A** I think it was for all -- any and all witnesses.

13:47:53 18 **THE COURT:** I'm going to ask you to pull the
19 microphone a little bit closer to you or --

13:47:56 20 **THE WITNESS:** I believe it was for all the witnesses
21 in the case.

13:47:58 22 **BY MS. SCARDINO:**

13:47:59 23 **Q** Did you have any reason to believe, at the time you filed
24 this motion, that there were any other informants in this case
25 other than Beckcom?

Ms. Scardino Direct of Terry Gaiser

13:48:07 1 **A** No.

13:48:11 2 **Q** And you took this up at a pretrial hearing as well. That's
3 Exhibit 70 at 28 through 29.

13:48:19 4 **A** Correct.

13:48:24 5 **Q** And the Court brought it up. They said motion to require
6 the state to reveal agreements. Ms. Siegler says, "We've agreed
7 on that, Judge.

13:48:31 8 The Court: "That's granted."

13:48:33 9 And you state, "Can we have the state, state for the record
10 what the agreement is?"

13:48:38 11 And Ms. Siegler says, "The agreement right now, Judge, that
12 I have with witness Michael Beckcom is that in exchange for his
13 cooperation and truthful testimony, when this trial is
14 completely over with and resolved, I will notify his assistant
15 U.S. attorney, whose name is Mark Cullers, in Fresno,
16 California, that he cooperated in this case, what the level of
17 his cooperation was, the extent of his cooperation and whether
18 or not I believe that it was truthful.

13:49:03 19 "At that time, it will be Mark Cullers' decision as to
20 whether or not to file a Rule 35 reduction. Even if he files
21 that Rule 35 reduction, it will be his superior's decision
22 whether or not to proceed with it, and even if they decide to
23 proceed with it, it will be his federal judge in California's
24 decision whether or not to give him any kind of reduction in his
25 sentence. That's the agreement that we have."

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Do you remember that?

A Yes.

Q Okay. Did Ms. Siegler ever mention at this hearing that she had written a Rule 35 letter for Nathan Foreman? That's Exhibit 44.

THE COURT: In the course of your preparation for the trial, had you ever heard of Nathan Foreman?

THE WITNESS: Well, I had heard of Nathan Foreman from the -- the written statement that -- that Beckcom wrote to Siegler.

THE COURT: Okay.

BY MS. SCARDINO:

Q Did you ever see this Exhibit 44? Was this produced to you by the state?

A No.

Q Okay.

MS. SCARDINO: Can you pull up Exhibit 43, please?

THE COURT: You got to say --

MS. SCARDINO: I'm sorry?

THE COURT: Got to show the next page. It's not obvious who wrote that.

Is that from Ms. Siegler? Okay. Thank you.

MS. SCARDINO: Yes.

BY MR. RYTTING:

Q Exhibit 43. Exhibit 43 is a Rule 35 letter written by

Ms. Scardino Direct of Terry Gaiser

1 Ms. Siegler for Jesse Moreno. Did the state ever show this to
2 you?

13:50:39 3 **A** No. I was not aware of the existence of a Jesse Moreno.

13:50:44 4 **Q** So I take it, then, that Ms. Siegler did not mention to you
5 that she had testified in a Rule 35 hearing for Moreno two
6 months before Mr. Prible's trial?

13:50:55 7 **A** I believe the record shows that she stated to the Court that
8 she had testified on a Rule 35 hearing somewhere, but there was
9 not reference to anyone where it was or why it was or who the
10 witness was.

13:51:11 11 **Q** Okay. And that -- that actually occurred on Exhibit 70 at
12 page 30, 31. And the Court says, "Is it the State's intention
13 to be a part of that process in recommending a Rule 35
14 reduction?"

13:51:29 15 And Ms. Siegler says, "Yeah. They tell me that the mere
16 fact that I write the letter means that I'm recommending it.
17 I've done one before, and I went to Louisiana and testified."

13:51:38 18 Is this the hearing that you were just referring to?

13:51:42 19 **A** It is.

13:51:43 20 **Q** Okay. Did she tell you or say in court who this Rule 35
21 hearing in Louisiana was for?

13:51:49 22 **A** No.

13:51:49 23 **Q** Did she mention that it was connected, at all, to
24 Mr. Prible's case?

13:51:54 25 **A** No. No.

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13:51:55 1 Q Okay.

13:51:56 2 A I had no reason to believe it was in any way connected to
3 the case we were trying.

13:52:01 4 Q Okay.

13:52:02 5 MS. SCARDINO: If you could post Exhibit 70 at 30
6 through 31. I guess, actually, that's already up. Sorry.

13:52:11 7 BY MS. SCARDINO:

13:52:12 8 Q And the Court gave Ms. Siegler a second opportunity to tell
9 you of any agreements when they said: (Reading) If on any
10 future date the agreement changes or is modified, you'll notify
11 the Defense as soon as possible. And that also, obviously,
12 extends to any other witnesses involved in the case as far
13 as" --

13:52:34 14 THE COURT: Slow down. Slow down.

13:52:35 15 BY MS. SCARDINO:

13:52:35 16 Q (Reading) -- "at this point in time, are there any other
17 agreements with any other witnesses involved in the case?"

13:52:41 18 And Ms. Siegler responded: (Reading) One of the defendant's
19 ex-wives' names is Melanie Garrison. She's bench warranted by
20 Karen, and she'll be here this week. She just got mentioned --
21 moved to Gatesville by Waco, and I -- I haven't even talked to
22 her, but I've told her family that I will try to get her sent
23 back to Gatesville when this is over because she likes it there.
24 She's getting a degree there or something. If you call that a
25 promise, I've talked to her family about that. That's all I can

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1 think of."

13:53:11 2 And the Court asks, "And anybody else or any other
3 agreements that you're aware of?"

13:53:15 4 Ms. Siegler said, "No, sir, that's it."

13:53:19 5 You see that?

13:53:20 6 **A** Yes, I do.

13:53:21 7 **Q** Okay. Still Ms. Siegler -- no mention of Mr. Foreman?

13:53:24 8 **A** No.

13:53:24 9 **Q** Correct?

13:53:25 10 Still no mention of Mr. Moreno, correct?

13:53:28 11 **A** No mention of Mr. Moreno; no mention of Mr. Foreman, no.

13:53:32 12 **Q** And then the court gave her a third opportunity to inform
13 her of deals that she had made with informants. Do you recall
14 that?

13:53:39 15 **A** I -- you'd have to show me.

13:53:41 16 **Q** Okay. The Court says, "Anybody else or any other agreements
17 that you're aware of?" Ms. Siegler says, "No, sir, that's it."

13:53:50 18 The Court, "Same thing, if anything comes about notify the
19 Defense as soon as possible."

13:53:55 20 **A** Okay.

13:53:55 21 **Q** So what was your understanding, Mr. Gaiser, after this
22 pretrial hearing, of agreements that the state had made with any
23 informants in this case?

13:54:04 24 **A** That it was my understanding -- it was obvious from the
25 hearing that the -- the only agreement they had was with Michael

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1 Beckcom. That was the only -- that was the only witness that
2 they were giving consideration for in terms of his testimony.
3 He was the only one that I was ever aware of.

13:54:27 4 Q And were you aware at this time that Ms. Siegler had already
5 been in communication with Mr. Cullers or -- Mr. Beckcom's
6 federal prosecutor for months before Mr. Prible's trial?

13:54:39 7 A No.

13:54:41 8 Q Your understanding that -- was that she was going to make
9 the phone call to him after trial?

13:54:45 10 A After the testimony, correct.

13:54:47 11 Q If Mr. Beckcom testified truthfully?

13:54:50 12 A Right.

13:54:51 13 Q Okay.

13:54:51 14 A In her opinion.

13:54:54 15 Q Going back to your Brady motion, you also requested all
16 evidence indicating the deceased, Steve Herrera, was involved in
17 the purchase, sale, delivery or distribution of drugs, firearms,
18 or money laundering, and all evidence intending to incriminate
19 any person other than the defendant in the commission of the
20 defense -- of the offense.

13:55:19 21 Do you recall making that request?

13:55:21 22 A Yes.

13:55:21 23 Q Okay.

13:55:22 24 MS. SCARDINO: And if you could post Exhibit 70 at 9.

13:55:30 25 BY MS. SCARDINO:

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Q And at the pretrial hearing, you stated, "Ms." -- to the court, "Ms. Siegler has represented that we've seen everything they have in their possession and would be in compliance with that request."

Do you see that?

A Yes.

Q Okay.

MS. SCARDINO: Can you pull up Exhibit 130?

A Can you go back to that exhibit?

BY MS. SCARDINO:

Q Sure. Which -- the hearing testimony?

A The one that was just up.

Q Sure. That's Exhibit 70.

A Okay. Thank you.

MS. SCARDINO: Now, if you could go back to Exhibit 130.

BY MS. SCARDINO:

Q Was this letter produced to you by the state before Mr. Prible's trial?

A You've shown me that, and I've never seen that.

Q Okay.

A Before trial or after trial.

Q Okay. Now I'm going to show -- or go to your request in your --

A I mean, obviously, that was extremely relevant to whether

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1 there was another motive for killing -- for killing Steve as to
2 whether or not he was dealing drugs and had money in the house.

13:56:52 3 **THE COURT:** Do you -- you said you had other cases
4 with Ms. Siegler?

13:56:55 5 **THE WITNESS:** What I said was I had dealt with
6 Ms. Siegler, but never in a trial.

13:57:01 7 **THE COURT:** Never got to trial, but --

13:57:02 8 **THE WITNESS:** I've had dealings with her since.

13:57:05 9 **THE COURT:** And you've had -- well, given the course
10 of your dealings with her before and since, would you say she
11 was forthcoming about evidence she had?

13:57:16 12 **THE WITNESS:** Well, obviously, from what I'm seeing
13 now.

13:57:19 14 **THE COURT:** But I'm asking --

13:57:21 15 **THE WITNESS:** Back then, I had no reason --

13:57:22 16 **THE COURT:** You had no reason to think that was a
17 pattern?

13:57:24 18 **THE WITNESS:** -- to be skeptical of -- to be skeptical
19 of the things she was telling me.

13:57:28 20 **THE COURT:** How about since then?

13:57:29 21 **THE WITNESS:** Well, since then I've had other dealings
22 with her and her *Cold Justice* show. A client of mine spent four
23 years in jail on a charge that was ultimately dismissed by
24 Kim Ogg because it was worked up by *Cold Justice*.

13:57:45 25 **THE COURT:** Okay.

Ms. Scardino Direct of Terry Gaiser**BY MS. SCARDINO:**

Q Could you have made use of this letter that I just showed you, Exhibit 130, if you had had that prior to Jeff's trial?

A Well, of course. I would use it to -- to further investigate all these homes and whether there were drug dealings and -- dealings and all these other addresses and who was involved. It certainly would have given somebody else a motive to -- to break in and -- and steal drugs or money and execute the people living in the house.

Q You also asked, in your Brady motion, for all witness statements, whether written or oral.

MS. SCARDINO: And if you could go to Exhibit 70 at 16 through 17.

BY MS. SCARDINO:

Q Why would you have asked for all witness statements?

A Well, I wanted it for discovery, of course, to see, you know, what -- whether I could use it on cross.

Q Okay. And you'll see the court says, "I'm going to say all witness statements, whether oral or written by any witness." Ms. Siegler states, "Judge, how about just written? Because oral statements is a lot of people that end up not saying anything worth our time, and I didn't take notes on and I don't plan on using."

The Court says, "Okay. I guess with the exception of any oral argu- -- any oral statement by any witness turns out to be

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1 Brady --"

13:59:14 2 Ms. Siegler, "Okay."

13:59:17 3 The Court, "-- or exculpatory or impacts on punishment,
4 then that needs to be turned over. So I'm going to say any
5 written statements, and then I'm going to change the language to
6 any oral statements which are Brady or mitigate punishment."

13:59:34 7 **MS. SCARDINO:** Now, if you could show Exhibit 37,
8 please.

13:59:46 9 **BY MS. SCARDINO:**

13:59:47 10 **Q** Exhibit 37 is a letter from Ms. -- to Ms. Siegler from a
11 prison inmate named Jesse Gonzalez. Was this statement turned
12 over to you?

13:59:59 13 **A** No. I haven't seen this until you showed it to me in
14 preparing for my testimony.

14:00:04 15 **Q** Could you have made use of it if you had had it before
16 Mr. Prible's trial?

14:00:09 17 **A** Well, I mean, all of this together, you know, brings into
18 question the credibility of these people in the Beaumont
19 facility in terms of people wanting to give information to get
20 consideration for doing this. So I'd want to know, you know,
21 how, generally, this was going on at this facility.

14:00:39 22 I had not seen these names or these letters prior to -- to
23 seeing them recently.

14:00:47 24 **Q** Okay. And I'm going to show you Exhibit 36. This is a
25 letter to Ms. Siegler from another inmate named Carl Walker.

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1 Did the state produce this to you?

14:01:03 2 **A** No.

14:01:05 3 **Q** And, again, you could have made use of this in the same way
4 that you previously stated?

14:01:09 5 **A** Yes.

14:01:11 6 **MS. SCARDINO:** And if you could go to Exhibit 35.

14:01:20 7 **BY MS. SCARDINO:**

14:01:20 8 **Q** This is a letter to Ms. Siegler from Mark Martinez, another
9 inmate at FCI Beaumont. Was this produced to you by the state?

14:01:28 10 **A** No. Same -- same answer. I hadn't seen this till you
11 showed it to me recently.

14:01:33 12 **Q** Okay. And you went through that entire file, case file,
13 correct --

14:01:36 14 **A** The file --

14:01:37 15 **Q** -- that they allowed you to go through at the DA's office?

14:01:40 16 **A** Yes.

14:01:46 17 **Q** Is one of the reasons you would have wanted to see these
18 letters is to determine how Ms. Siegler chose which informant to
19 use?

14:01:54 20 **A** Oh, absolutely. The -- this bears on all of their
21 credibility, but, you know, why Beckcom of -- I would have -- I
22 would have wanted that at the time, but not knowing this, I
23 couldn't wonder anything back then.

14:02:13 24 **Q** Would it have indicated to you whether or not these inmates
25 were discussing Jeff's case among themselves with Beckcom?

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MS. MIRANDA: Objection, Your Honor. I'm going to

object to leading. If he's here to testify about the materiality and what he would have made use to, I absolutely object to counsel suggesting what that would be, and I would ask that the witness be the one that would identify the way in which he would use this information, if it had come to his attention.

THE COURT: Well, she's asking, "Would it have indicated to you whether or not these inmates were discussing Jeff's case among themselves."

MS. MIRANDA: Yes, and in that she is suggesting a manner in which he would have used that. And if he is going to come to the Court and testify about materiality, I believe that it ought to be his testimony and not counsel's testimony with respect to the ways and the manner and means in which he would have used this information.

THE COURT: Okay. Fair enough.

Can you tell us what you would have done with this information?

THE WITNESS: That's hard to answer, Judge, since I didn't see it at the time. Answering it now is -- is...

THE COURT: Okay. If these are leading questions, they're not leading you anywhere, are they?

THE WITNESS: During Beckcom's testimony, he -- well, pardon me. It was my contention during trial that Beckcom got all the information he had about these killings from public

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information, from the complaint that was on file, from -- from the -- the news releases that had to do with -- Beckcom got all of that information. That's one of the main thrusts of my cross-examination of him was --

THE COURT: Yeah. Yeah.

THE WITNESS: But this would definitely have shown that there were others that were interested in what Jeff was saying over at the -- the -- the facility. In fact, a witness came and testified at trial that the complaint and other information was readily available to anybody in the FCI.

BY MS. SCARDINO:

Q I'm going to show you Exhibit 96. That's a -- this is a typed --

MS. SCARDINO: Is that 96?

BY MS. SCARDINO:

Q Yes. That's a typed letter asking -- requesting -- from the DA's office requesting a meeting with Mr. Beckcom and Mr. Davi. Did you ever see that in the DA's file?

A No.

Q Okay.

A No.

Q And Exhibit 23, this is a November 12th, 2001, letter from Alan Percely to Ms. Siegler regarding Nathan Foreman. Was that ever produced to you by the state?

A No. No.

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14:05:17 1 Q Okay. I'm going to go to Exhibit 71, which I'll give you a
2 page number. This -- you had -- yeah. This is the hearing on
3 your motion for equal access to all information obtained by the
4 prosecution by means of NCIC or JIMS investigations. Do you
5 remember filing that?

14:05:38 6 A Yes.

14:05:38 7 Q Was that a standard discovery motion that you would usually
8 file?

14:05:42 9 A Yes.

14:05:42 10 Q And what is an NCIC?

14:05:45 11 A Well, it's the National Crime Information Center. They keep
12 records from all the states and -- and -- in terms of arrests
13 and convictions.

14:05:56 14 Q Okay. So in layman's terms, it's like a criminal history
15 report --

14:05:59 16 A Right.

14:05:59 17 Q -- would you say?

14:06:00 18 Okay. Did you, as a defense attorney, have the ability to
19 generate it?

14:06:04 20 A No. No way.

14:06:06 21 Q Why did you specifically ask for the state to produce NCICs?

14:06:12 22 A Just discovery of their -- for the witnesses they were going
23 to use, to specifically ask for their arrest records.

14:06:23 24 Q If you had seen an NCIC in a file for a witness that you had
25 never heard of, what -- would that have signaled anything to

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1 you?

14:06:34 2 **A** I might want -- I'd want to know why it was there, you know.

3 At this late, you know -- looking back, I can't answer what I

4 would have done at the time. But -- but it certainly would have

5 raised my interest to wonder -- wondering what these records are

6 doing in -- in their file.

14:06:52 7 **Q** Might you have investigated an individual whose --

14:06:55 8 **A** Yeah. I'd want --

14:06:56 9 **MS. MIRANDA:** Again, Your Honor, objection.

14:06:57 10 **THE COURT:** Okay. Yeah. That's fair enough.

11 Rephrase your question.

14:07:00 12 **MS. SCARDINO:** Okay.

14:07:02 13 **BY MS. SCARDINO:**

14:07:02 14 **Q** Did you understand the court to be ordering Ms. Siegler to

15 produce NCICs of only testifying witnesses at this hearing?

14:07:10 16 **A** I believe that's what the judge ruled, if I'm not mistaken.

14:07:13 17 **Q** And not non-testifying --

14:07:15 18 **A** Right.

14:07:15 19 **Q** -- witnesses?

14:07:17 20 Did you ever see Exhibit 93 -- or, I'm sorry, 169?

14:07:28 21 Did the state produce to you this NCIC of Nathan Foreman?

14:07:33 22 **A** No.

14:07:39 23 **MS. SCARDINO:** Can you pull up Exhibit 94?

14:07:48 24 **BY MS. SCARDINO:**

14:07:48 25 **Q** Did the state produce from you -- from Mr. Prible's file

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1 this NCIC for Rafael Dominguez?

14:07:56 2 **A** I don't remember seeing that, no.

14:07:57 3 **Q** Do you know who Rafael Dominguez is?

14:07:59 4 **A** No.

14:08:02 5 **MS. SCARDINO:** If you could pull up Exhibit 72 at 10
6 through 14.

14:08:11 7 **BY MS. SCARDINO:**

14:08:11 8 **Q** So do you recall another pretrial hearing on October 11th,
9 2002, to take up discovery matters again?

14:08:18 10 **A** What's the day?

14:08:19 11 **Q** October 11th, 2002.

14:08:21 12 **A** So that would be right before trial.

14:08:23 13 **Q** Yes.

14:08:25 14 **A** Yes. I remember there was a hearing.

14:08:30 15 **THE WITNESS:** Excuse me, Judge.

14:08:31 16 **BY MS. SCARDINO:**

14:08:33 17 **Q** And, again, the issue of how contact was first initiated
18 with Mr. Beckcom came up. Do you recall that?

14:08:52 19 **A** I remember seeing this with -- but in terms of -- of having
20 seen it from when you showed it to me. I'd -- I --

14:09:01 21 **Q** Does this transcript refresh your recollection of that
22 hearing?

14:09:05 23 **A** Well, certainly.

14:09:06 24 **Q** Okay. And at that hearing, you stated, "Finally, Judge,
25 just so the record is clear on this, when we initially had a

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1 hearing concerning discovery with reference to Michael Beckcom,
2 one of the orders the Court issued was that the state furnish us
3 with -- and I believe the Court said that that report could be
4 oral -- an indication of when and how contact was first
5 initiated by -- with regard to Mr. Beckcom and the dates of any
6 contacts with him, and I'm somewhat confused -- and that may be
7 my own fault, in my old age, in having a lot of senior
8 moments -- as to those dates and how contact was initiated. And
9 I re-urge that we've been told on, I believe, two different
10 dates, but I may be wrong on that -- if Ms. Siegler could
11 reinform me on that, in that regard, I would appreciate it."

14:09:51 12 And Ms. Siegler responded, "Judge, on the record -- I don't
13 have my notes in front of me, so I'm trying to remember this as
14 best I can. I know that I told Mr. Gaiser inconsistent at one
15 point because I went back and looked up the notes."

14:10:05 16 You see that?

14:10:06 17 **A** Yes.

14:10:07 18 **Q** Was this -- and she states, "The first time he contacted me,
19 it was by telephone. He called me. He got my name from Nathan
20 Foreman," and the Court asks, "Who's Nathan Foreman?"

14:10:21 21 Ms. Siegler responds, "Nathan Foreman is another inmate at
22 FCI medium. What else did you ask me?"

14:10:26 23 You see that?

14:10:28 24 **A** Yes.

14:10:28 25 **Q** Now, what did you understand -- or did you have any reason

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1 to suspect from this exchange between Ms. Siegler and the Court
2 that Foreman had come to Ms. Siegler at any previous time and
3 spoken to her about this case?

14:10:44 4 **A** No, I did not.

14:10:45 5 **Q** Okay. Did she ever mention to you, before trial, that
6 Prible had supposedly confessed to Beckcom and Foreman?

14:10:55 7 **A** No.

14:10:55 8 **Q** Okay. You just remember reading that in that -- that
9 handwritten letter right before trial?

14:11:00 10 **A** Correct. Correct.

14:11:01 11 **Q** Okay. Did she mention anything about Jesse Moreno?

14:11:05 12 **A** No.

14:11:06 13 **Q** Okay.

14:11:06 14 **A** That's a new name to me.

14:11:08 15 **Q** Okay.

14:11:08 16 **MS. SCARDINO:** If you could post Exhibit 72 at 13 to
17 14.

14:11:16 18 **BY MS. SCARDINO:**

14:11:16 19 **Q** And also at this pretrial hearing, you asked Ms. Siegler how
20 many phone calls she had had with Mr. Beckcom. Do you remember
21 this? Does this refresh your recollection?

14:11:27 22 **A** Yes.

14:11:28 23 **Q** Okay. And Ms. Siegler responded, "In altogether, there has
24 been about four or five phone calls where he's called me from
25 Beaumont." And you state, "He initiated all those phone calls?"

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1 Ms. Siegler says, "He has to because I can't call an inmate,
2 obviously."

1 4 : 1 1 : 4 4 3 Okay. Did you have any reason to believe that she could
4 call an inmate?

1 4 : 1 1 : 4 9 5 **A** No. I took her at her word.

1 4 : 1 1 : 5 1 6 **Q** Okay. Why was it important for you to know whether
7 Ms. Siegler or whether Mr. Beckcom initiated those phone calls?

1 4 : 1 1 : 5 9 8 **A** Same thing we've talked about. Who -- who was cultivating
9 who? Was the -- who had -- who precipitated the -- the
10 information? Who -- who was the instigator of the -- the
11 informant's testimony?

1 4 : 1 2 : 1 8 12 **MS. SCARDINO:** If you could post Exhibit 72 at 5
13 through 6.

1 4 : 1 2 : 2 6 14 **BY MS. SCARDINO:**

1 4 : 1 2 : 2 6 15 **Q** At this hearing, the issue of the alibi witness also came
16 up. Do you remember the alibi witness in this case?

1 4 : 1 2 : 3 2 17 **A** Yes, I do.

1 4 : 1 2 : 3 3 18 **Q** Okay.

1 4 : 1 2 : 3 6 19 **A** The -- she was a young girl that lived near the Pribles
20 that, apparently, had seen or claimed to have seen Jeff being
21 dropped off at his parents' house on the night these murders
22 occurred and seeing -- believing that it was Steve Herrera's car
23 that they arrived in. So I -- yeah, I remember her.

1 4 : 1 3 : 0 0 24 **Q** And did you learn about the alibi witness from the state?

1 4 : 1 3 : 0 3 25 **A** No, no. We developed that. I have -- we developed that,

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1 and I believe it was Mr. Prible, Jeff's dad, that may have
2 contacted her originally.

1 4 : 1 3 : 1 7 3 Q Did you attempt to find out about the alibi witness from the
4 state?

1 4 : 1 3 : 2 2 5 A I'm sure we talked about it at some point, but --

1 4 : 1 3 : 2 5 6 Q Okay.

1 4 : 1 3 : 2 6 7 A -- I mean, I would have to have subpoenaed her, and I'm sure
8 the state was aware of that subpoena. Now, what else they knew,
9 I do not know.

1 4 : 1 3 : 3 4 10 Q Okay. I'd like for you to look at Exhibit 72 at page 5 up
11 on the screen when you specifically asked, "Your Honor, at this
12 point, we would continue to make our request concerning the
13 information Curtis Brown may have, the alibi witness that we
14 discussed at the last session of court." Do you see that?

1 4 : 1 3 : 5 5 15 A Yes.

1 4 : 1 3 : 5 6 16 Q Does this refresh your recollection as to whether you asked
17 the state about that alibi witness at that pretrial hearing?

1 4 : 1 4 : 0 3 18 A Well, obviously, I did.

1 4 : 1 4 : 0 5 19 Q Okay. And Ms. Siegler said, in response to that, "Judge, I
20 re-interviewed or interviewed in great detail Detective Brown on
21 Wednesday afternoon and reasked him the question about
22 Mr. Gaiser's concern about this witness. He told me pretty much
23 the same thing that I stated on the record before, that he
24 vaguely recollects that. At the time, he didn't note the time
25 that the witness was talking about Prible, saying Prible was

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1 dropped off. He looked again for notes. He can't find any
2 notes."

1 4 : 1 4 : 3 3 3 Going down, he says -- she says, "And they think that the
4 witness was a female, and that's the best that I have as far as
5 what they can remember. And, again, there are no notes or
6 supplements reflecting any of that."

1 4 : 1 4 : 4 5 7 You see that?

1 4 : 1 4 : 4 7 8 **A** Yes.

1 4 : 1 4 : 4 8 9 **Q** Okay. And so I want to show you Exhibit 20, page 7.

1 4 : 1 4 : 5 8 10 Did you ever see this note in -- or was this note produced
11 to you from Mr. Prible's file?

1 4 : 1 5 : 0 5 12 **A** No.

1 4 : 1 5 : 0 6 13 **Q** Okay. Do you see there where it says, "12-year-old witness
14 saw them together," and it's dated December 10th, '01?

1 4 : 1 5 : 1 3 15 **A** I -- I had not seen that until it was shown to me by you.

1 4 : 1 5 : 1 9 16 **Q** Okay. To your knowledge, was the state aware of -- of the
17 alibi -- or did the state have any notes from this alibi witness
18 or about this alibi witness?

1 4 : 1 5 : 3 0 19 **A** They never presented any to me.

1 4 : 1 5 : 3 6 20 **Q** Did Siegler tell you about a meeting that she had had with
21 Foreman on August 8th, 2001?

1 4 : 1 5 : 4 4 22 **A** No.

1 4 : 1 5 : 4 8 23 **Q** Did Ms. Siegler or Mr. Wisner tell you about a meeting
24 between Siegler, Foreman and Beckcom at FCI Beaumont on
25 December 10th, 2001?

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A No. No.

Q Did Ms. Siegler ever tell you about Hermelio Herrero?

A Who?

Q Hermelio Herrero.

A No.

Q Did she mention to you that some of the same informants in Mr. Prible's case were also helping her on another murder case?

A No.

MS. MIRANDA: Objection to mischaracterization of the record.

THE COURT: Okay. You can take -- you can bring that up in cross.

MS. SCARDINO: Can you pull up Exhibit 32, please?

BY MS. SCARDINO:

Q I'm going to show you a photograph taken at FCI Beaumont on November 11th, 2001. Was this -- this was almost a year before trial; is that correct?

A Yes.

Q Okay. Can you identify any of the inmates in this photo?

A I see Jeff and Michael Beckcom.

Q Okay.

A That's -- I don't know the others.

Q Okay. Now, if you had known the identities of any other of these gentlemen and had seen those informant letters that I showed you earlier, could you have made use of this photo at

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trial?

A Well, I certainly could have talked to Jeff about it if I -- if -- if I had seen it. But prior to trial, no, I had not seen it.

And I don't remember -- it wasn't -- obviously, it was not offered in evidence at trial.

MS. SCARDINO: Can you pull up Exhibit 170 at 3 through 7?

BY MS. SCARDINO:

Q And this is an excerpt from Ms. Siegler's closing argument regarding the DNA evidence. And as you stated earlier, you recall the theory -- the state's theory about the DNA evidence?

A Yes.

Q Okay. And what was that again?

A That the -- that their theory was that Jeff had ejaculated and immediately shot Nilda in the back of the head.

Q Okay.

MS. SCARDINO: Can you post Exhibit 20 at page 4?

BY MS. SCARDINO:

Q Did you ever see this note in Jeff's file in the DA -- in the file produced by the DA's office?

A No.

Q Okay.

A I mean, I know who Pam McInnis is.

Q Who's Pam McInnis?

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A She a serologist that worked in the -- for Fort Bend County,
as I remember.

Q Okay. And you see that note says that semen lives up to
72 hours, teeth clenched shut?

A Yeah. I -- I've never seen that piece of paper till it was
shown to me recently.

Q Okay.

MS. SCARDINO: I pass the witness, Your Honor.

THE COURT: Okay. Why don't we take our afternoon
break. Ten minutes, please.

(Recess taken from 2:19 p.m. to 2:35 p.m.)

THE COURT: Please be seated.

Okay. Let's proceed with cross.

CROSS-EXAMINATION

BY MS. MIRANDA:

Q Mr. Gaiser, we just met, like, five seconds ago; is that
correct?

A Yes.

Q So we have not discussed this case previously, ever?

A No, we have not.

Q All right. I want to go over a little bit of your
testimony, and I'm going to put up there on the screen what has
been marked as the -- Petitioner's Exhibit 95. I believe you
were shown that a bit ago. And while he's putting that up there
on the screen, I'd like to ask you a question.

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When you were filing that pretrial motion with respect to witness statements, can you tell -- tell the Court what you meant by witness statements? What were you looking for?

A Any statement given by a witness relative to the -- to the facts of the case.

Q And when you say "the facts of the case," we're talking about Mr. Prible's case; is that correct?

A Of course.

Q Okay. And so then, earlier, you were shown Exhibit 95. It's petitioner's exhibit, which was represented to you as a statement from Mr. Beckcom with respect to Anthony Davi. Do you see that at the bottom paragraph on there?

A No, I don't.

Q Okay.

MS. MIRANDA: Can you move it up a little bit?

BY MS. MIRANDA:

Q Okay.

A That's Mr. Beckcom's signature, I take it?

Q That's what it purports to represent, yes.

A Yes.

Q Okay. So my question is: Looking at this -- this statement with respect to what Mr. Beckcom said about Anthony Davi, what -- what part of this statement right here is relevant to Mr. Prible's case?

A Well, whatever Mr. Beckcom is doing to gain consideration

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1 for his testimony, whether it -- it has to do with my case or
2 other cases that he's been involved in trying to get
3 consideration for his involvement in, all are relevant to -- to
4 this trial.

1 4 : 3 7 : 0 3 5 Q Okay. So then this is relevant to the extent that it's --
6 represents what, a potential deal? Because this is -- there are
7 no facts relevant to Mr. Prible's case on this letter, correct?

1 4 : 3 7 : 1 3 8 A No. Mr. Beckcom is, once again, probing to see if he can
9 either get help for himself or someone else --

1 4 : 3 7 : 2 2 10 Q Okay.

1 4 : 3 7 : 2 2 11 A -- based upon information that he's discovered.

1 4 : 3 7 : 2 5 12 Q And that's -- and that's what I wanted to know. So this is
13 relevant to Mr. Beckcom and -- and impeachment of Mr. Beckcom;
14 is that correct?

1 4 : 3 7 : 3 1 15 A That's the way I see it, yes.

1 4 : 3 7 : 3 3 16 Q Okay. And to potential what, a deal that he has with the
17 state? Is that your testimony?

1 4 : 3 7 : 3 7 18 A No, to the lengths he's willing to go to -- to get
19 consideration for -- for -- from the state for whatever he's
20 doing.

1 4 : 3 7 : 4 7 21 Q Okay. And then how -- how would you have used this -- this
22 exhibit at trial?

1 4 : 3 7 : 5 3 23 A This may not have been used at trial, but it certainly would
24 have prompted more investigation into what was going on with
25 Mr. Beckcom and these other inmates.

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Q And to what end? What were you attempting to show the jury about Mr. Beckcom?

A That he was a liar.

Q Okay.

A That he's willing to say anything to get --

Q Okay.

A -- a deal.

Q All right. Now, your testimony earlier that you requested and the court ordered the prosecutor in this case to turn over information regarding any deals that they might have with the informants in this case -- is that correct?

A Yes.

Q And you testified with respect to a Petitioner's Exhibit 43 -- and we'll put that up there -- that Ms. Siegler had not disclosed this -- the Rule 35 letter that she wrote for Mr. Moreno. Do you recall testifying to that?

A That's correct.

Q Okay. And then from this letter -- did Mr. Moreno testify in Mr. Prible's case?

A No.

Q Okay. Whose case did he testify in?

A I believe it was the Herrero case.

Q Okay. And so this Rule 35 agreement that she wrote, it was a deal that she made with Mr. Moreno in Mr. Herrero's case; is that correct?

Ms. Miranda Cross of Terry Gaiser

1 A As far as I can tell.

2 Q Okay. This is not a deal that she made in Mr. Prible's
3 case; is that correct?

4 A That -- that's correct.

5 Q So if you asked the court for Ms. Siegler to turn over deals
6 that she made with informants in Mr. Prible's case, this letter
7 would not be one of them, would it?

8 A In the -- in the technical sense, no. In the broader sense
9 of what was -- what was being done with Mr. Beckcom and the
10 people at the FCI, yes, it would.

11 Q Okay. I want you to look at this letter, and I want you to
12 tell me, from this letter, what has anything to do with
13 Mr. Beckcom.

14 A That letter has nothing to do with Mr. Beckcom.

15 Q Okay. What does Mr. Moreno have to do with Mr. Beckcom?

16 A Apparently, from what I'm told after the fact --

17 Q Okay.

18 A -- they were inmates together at the FCI.

19 Q Mr. Moreno and Mr. Beckcom were inmates together at FCI
20 Beaumont. That's your testimony?

21 A That's -- I -- I -- that's what I understand.

22 Q You said you were told that. Who told you that?

23 A I believe it was the -- the lawyers for Mr. Prible.

24 Q And they told you that Mr. Beckcom and Mr. Moreno were
25 inmates together at FCI Beaumont?

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1 4 : 4 0 : 1 7 1 A I believe so.

1 4 : 4 0 : 1 8 2 Q Okay. And that's why you believe this document has
3 relevant -- is relevant to your case?

1 4 : 4 0 : 2 4 4 A Yes.

1 4 : 4 0 : 2 5 5 Q Okay. And then -- and how precisely would you have used a
6 deal made by a prosecutor in an unrelated murder case in your
7 case?

1 4 : 4 0 : 3 7 8 A At this point in time, you know, I -- looking back, I can't
9 answer what I would have done at that time. But it certainly
10 would have alerted me to what she was doing with other witnesses
11 in terms of what she was -- how far she would go to seek a
12 Rule 35.

1 4 : 4 0 : 5 7 13 Q "How far she would go" explain that for me.

1 4 : 4 1 : 0 0 14 A Well, what she would do. How far she would go.

1 4 : 4 1 : 0 3 15 Q So if she made a deal with an inmate in an unrelated murder
16 case, and she wrote a Rule 35 agreement for that inmate, what --
17 I'm not sure that I understand --

1 4 : 4 1 : 1 2 18 A Well, I certainly could cross Mr. Beckcom as to what his
19 understanding was of what Kelly Siegler would do for him.

1 4 : 4 1 : 1 9 20 Q "For him," for Mr. Beckcom?

1 4 : 4 1 : 2 1 21 A Yes.

1 4 : 4 1 : 2 2 22 Q But not for Mr. Moreno?

1 4 : 4 1 : 2 3 23 A Based on what he [sic] had done for other inmates.

1 4 : 4 1 : 2 8 24 Q You would cross --

1 4 : 4 1 : 2 9 25 A What she had done for other inmates.

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Q You would cross-examine Mr. Beckcom about what --

A I consider -- I would ask him if he knew Jesse Moreno, if she [sic] knew Kelly Siegler's relationship with Mr. Moreno, what she had done for Mr. Moreno.

Q Okay.

A I mean, I wouldn't -- when I cross-examined Mr. Beckcom, I went into some of the things he had done in the past --

Q Sure.

A -- to seek --

Q Sure.

A -- to seek benefits from the government.

Q And this is all based on the presumption that Mr. Beckcom and Mr. Moreno know each other, correct?

A No. It's based on what Kelly Siegler would do to -- how far she would go --

Q So it's your testimony --

MS. SCARDINO: Judge --

THE COURT: Let him finish. Let him finish.

BY MS. MIRANDA:

Q It's your testimony --

THE COURT: No. Let him finish.

MS. MIRANDA: Oh, I apologize.

A How far she would go to seek dispensation for these -- these snitches in the FCI.

BY MS. MIRANDA:

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Q And I understand what you're saying about the broader sense, but what I'm trying to understand -- as a trial attorney who has been practicing as long as you have, what I am trying to understand is how you would use information that is irrelevant to this case in the sense that Mr. Beckcom -- this has nothing to do with Mr. Beckcom.

And I apologize. I'm going to stop and start over.

MS. SCARDINO: I'm going to -- okay. Thank you.

BY MS. MIRANDA:

Q I'm going to stop and start over.

Is it your testimony that you would be able to cross-examine Mr. Beckcom with respect to deals that Ms. Siegler made in unrelated cases --

A I --

Q -- with any inmate at FCI Beaumont? Is that what your testimony is?

MS. SCARDINO: Objection, confusing, Your Honor.

THE COURT: I -- I think the witness understands it. It's --

THE WITNESS: Yeah.

THE COURT: He's already said he doesn't know what he would have done, looking back now, 18 years ago, 17 years ago.

But go ahead and answer it as best you can.

A Well, it certainly demonstrates how far she would go in aid of someone that was an informant from the FCI.

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BY MS. MIRANDA:

Q She would write them a Rule 35 letter?

A And I can certainly investigate that to see if there are others that she had done that with --

Q Okay.

A -- but I couldn't investigate this because --

Q Okay.

A -- I never saw it.

Q Okay. And then you --

MS. SCARDINO: Objection, Your Honor.

THE COURT: Just a second.

MS. SCARDINO: Excuse me. Just -- I would just ask that Ms. Miranda allow him to finish his statement.

THE COURT: Yeah. Fair enough.

MS. MIRANDA: I apologize, Your Honor.

THE COURT: Fair enough.

MS. MIRANDA: I apologize.

BY MS. MIRANDA:

Q So you would investigate to see what other inmates that she made deals with in other cases?

A Yeah, from the FCI.

Q Okay. Not related to Mr. Prible?

MS. SCARDINO: Objection, Your Honor, mischaracterizes evidence.

A Well --

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THE COURT: Well, the whole issue of the connection

with Mr. Prible's case may depend on whether Mr. Beckcom and Mr. -- and Mr. Moreno knew each in other prison. I can see that. But if they knew each other, and Moreno told Beckcom that this is a prosecutor who will not only write a letter, but actually go to an out-of-state court and testify on behalf of a defendant, I can see that it would be relevant.

But I don't have any idea whether Moreno and -- and Beckcom knew each other.

THE WITNESS: That -- I couldn't have known that at the time. I had no reason to believe there was a relationship. I didn't know who Mr. Moreno was.

THE COURT: It might be worth asking a question, though, mightn't it?

THE WITNESS: Of course, if I had seen the letter.

THE COURT: That's all I'm saying.

THE WITNESS: Yeah. Yes.

BY MS. MIRANDA:

Q And just -- because I think this is a critical point. I need to be clear on the record.

So in order for you to know whether Mr. Moreno knows Mr. Beckcom, Ms. Siegler would have to disclose to you every agreement or Rule 35 that she made with federal inmates in the federal pen so that you could ask them whether they knew Mr. Beckcom. Is that your testimony?

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A No, that's not my testimony. My --

Q Okay. So if there's no evidence in this record that Mr. Beckcom knew Mr. Moreno, then how would this letter -- how would Ms. Siegler know to disclose this letter to you?

MS. SCARDINO: Objection, Your Honor, calls for speculation and confusing.

THE COURT: Well --

MS. MIRANDA: Your Honor, he's the one that indicated that he would have liked to have --

THE COURT: I'm going to allow it. I'm going to allow it.

A What's the question?

THE COURT: The question is how this letter would have helped you and whether it -- you're making a claim as broad as Ms. Siegler should have disclosed to you every deal she had ever done with a federal inmate.

THE WITNESS: Well, seeing this now, you know, knowing what I know now, this letter would have been very important because it shows that she was making deals with other inmates in the same facility.

THE COURT: Well, but in fairness, a lot of prosecutors do that, don't they? State prosecutors make deals with federal inmates?

THE WITNESS: This is -- I haven't seen that many, Judge. I may be --

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1 **THE COURT:** But Ms. Miranda is asking whether you are
2 claiming as much as Ms. Siegler -- it was incumbent on
3 Ms. Siegler to turn over all deals she had ever made with a
4 federal inmate. I don't think that's what you're saying.

5 **THE WITNESS:** No. No, that's not what I'm saying.

6 **THE COURT:** Well, why don't you explain what you are
7 saying.

8 **THE WITNESS:** I'm trying -- she's willing -- how far
9 is she willing to go with inmates in the FCI that would -- you
10 can't -- I can't know until I investigate this letter, and I
11 can't know unless I know all the -- the people that she's making
12 deals with at the FCI. Obviously, there were others she was
13 making deals with.

14 **BY MS. MIRANDA:**

15 **Q** And I understand that. From a defense attorney perspective,
16 is there -- you would want to know everything, would you not?

17 **A** Of course.

18 **Q** Everything in the prosecutor's file; is that correct?

19 **A** Yes.

20 **Q** All right. But my question -- you were asked earlier
21 specifically about this exhibit in response to what was ordered
22 by the court in this particular case; is that correct?

23 **A** Say that again, please.

24 **Q** When you were asked by Mr. Prible's attorney about this
25 exhibit, you were discussing the order that was entered by the

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1 trial court in this case, in Mr. Prible's case; is that correct?

1 4 : 4 7 : 5 4 2 **A** Certainly.

1 4 : 4 7 : 5 4 3 **Q** And you asked the trial court for Ms. Siegler to disclose
4 deals that she made with individuals who were testifying in this
5 case; is that correct?

1 4 : 4 8 : 0 4 6 **A** Well, individuals who are witnesses or prospective witnesses
7 in the case.

1 4 : 4 8 : 0 8 8 **Q** Okay. Witnesses -- fair enough. Witnesses or prospective
9 witnesses in this case. Is that -- that's correct? That was
10 your understanding?

1 4 : 4 8 : 1 6 11 **A** Yes.

1 4 : 4 8 : 1 6 12 **Q** Okay. And then, to your knowledge, was Mr. Moreno a witness
13 or a prospective witness in this case?

1 4 : 4 8 : 2 1 14 **A** Not to my knowledge, no.

1 4 : 4 8 : 2 3 15 **Q** Thank you.

1 4 : 4 8 : 2 4 16 **A** Not at this...

1 4 : 4 8 : 3 0 17 **Q** All right. And now I'm going to put up there what has been
18 marked as Petitioner's Exhibit 44, which is the Rule 35
19 agreement that Ms. Siegler wrote for Mr. Foreman. Do you recall
20 being asked about this?

1 4 : 4 8 : 5 2 21 **A** Yes.

1 4 : 4 8 : 5 2 22 **Q** All right. And if you will look at that, what case was this
23 written in?

1 4 : 4 8 : 5 9 24 **A** The Herrero case.

1 4 : 4 9 : 0 1 25 **Q** Okay. Thank you.

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MS. MIRANDA: If I may have a moment, Your Honor.

THE COURT: Sorry?

MS. MIRANDA: May I have a moment?

THE COURT: Yes. Yes, you may.

BY MS. MIRANDA:

Q Now, also, just to be clear, earlier during your testimony, you were asked by Ms. Scardino whether, with respect to the documents that you were shown, you could make use of those documents. Do you recall that?

A Yes.

Q Okay. Now, it's not your testimony, is it, that whether or not you could make use of a document, that's not the standard for turning over Brady material, is it?

A Of course not.

Q Okay.

Now I'm going to show you what has been marked as Petitioner's Exhibit 30, and specifically I'm going to look at what is marked up at the top at page 5, and that bottom paragraph.

Can you read that bottom paragraph?

A "At first, when talking about the murder, Prible says -- Prible was taking a position of innocence. He said that Steve Herrera was his best friend. He said that he had been screwing Nilda, that she and Steve had an open relationship. He said that he had admitted to being at Steve's house that day, but

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1 Steve had driven him home and that he had a witness who saw him
2 being dropped off."

14:51:03 3 Q And then you can read the next line?

14:51:09 4 A "I later found out that this witness was then 12 or 13
5 years -- was a then or 12- or 13-year-old neighbor who had
6 gotten up to use the restroom. But then --"

14:51:23 7 Q All right.

14:51:24 8 A Is that enough?

14:51:25 9 Q No, go ahead. Finish that paragraph.

14:51:26 10 A "But then a question came to my mind. If Steve took Prible
11 home from his house that night, when did he have time to have
12 sex with Nilda? That's when I began to realize that he was
13 guilty and, from then on, began to press him about the murder."

14:51:40 14 Q All right. Now state -- or, I'm sorry, Petitioner's
15 Exhibit 30, you recognize that, don't you, as the handwritten
16 notes that you were provided by Ms. Siegler?

14:51:49 17 A Correct.

14:51:49 18 Q Okay. And so when -- when you testified earlier with
19 respect to Petitioner's Exhibit 109, where you were shown a note
20 about a 13-year-old girl and an alibi witness, and you testified
21 that you did not get those notes -- do you recall that?

14:52:05 22 A That's correct.

14:52:06 23 Q Okay. But you're not testifying that you didn't get that
24 information. You just didn't get that information in that form;
25 is that correct?

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A That's correct.

Q Because it would appear that she gave that information to you in -- in Mr. Beckcom's written statement?

A Well, if you call -- if you believe that that identifies the witness. I don't know when Mr. Prible talked -- talked to this young lady, if he, indeed, did.

Q Okay.

A "Talked" referring to Jeff's father.

Q Sure. And I understand that part. I'm just simply referring to -- to the note that you saw earlier when you said you didn't see that note. But the information in that note you received in the way of this handwritten statement from Mr. Beckcom?

A Well, obviously, in that handwritten note, Curtis Brown knew who that witness was and what the name of that witness was.

Q All right.

A It's an alibi witness. That's certainly material to this case.

MS. MIRANDA: Objection, Your Honor. Nonresponsive.

THE COURT: Ask another question. You think it was nonresponsive, ask a follow-up.

MS. MIRANDA: That's fine. I think the record speaks for itself on that, Your Honor.

BY MS. MIRANDA:

Q Is it fair to say that you're not a fan of jailhouse

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1 informant testimony?

1 4 : 5 3 : 1 9 2 **A** Of course I'm not.

1 4 : 5 3 : 2 0 3 **Q** Okay. Why is that?

1 4 : 5 3 : 2 3 4 **A** I believe that it's fundamentally unreliable. After Jeff's
5 case, the legislature even took action to the effect of -- of
6 passing a rule of evidence about corroboration of jailhouse
7 informants.

1 4 : 5 3 : 3 7 8 **Q** All right. And so when -- when you saw that there was going
9 to be a jailhouse informant in this case, what was your
10 reaction?

1 4 : 5 3 : 4 9 11 **A** Oh, another one of these.

1 4 : 5 3 : 5 1 12 **Q** Okay.

1 4 : 5 3 : 5 2 13 **A** Another snitch.

1 4 : 5 3 : 5 3 14 **Q** And did you think that it was important to attempt to
15 impeach this jailhouse informant?

1 4 : 5 3 : 5 8 16 **A** Of course.

1 4 : 5 3 : 5 9 17 **Q** Okay. And the best way, would you agree with me, to impeach
18 a jailhouse informant is to point out and highlight the sort of
19 inherent unreliability of their testimony; is that correct?

1 4 : 5 4 : 1 2 20 **A** That's one way.

1 4 : 5 4 : 1 3 21 **Q** Okay. To show that they have a motive to lie?

1 4 : 5 4 : 1 7 22 **A** That's one way.

1 4 : 5 4 : 1 8 23 **Q** All right. That they want to get their sentence reduced,
24 perhaps?

1 4 : 5 4 : 2 1 25 **A** That's one way.

Ms. Miranda Cross of Terry Gaiser

Q Okay. To -- to show that they have a criminal history?
They're, in fact, in jail?

A That's one way.

Q All right. And perhaps even on a felony?

A That's a way.

Q All right. What about demonstrating to the jury that the
information that the jailhouse informant has actually came from
a different source?

A Of course. That was part of my cross-examination.

Q Okay. And to show that the defendant could have come by
that information some other way, correct?

A That the informant could have come by that information some
other way.

Q Yes.

A Not the defendant.

Q Not the defendant. The informant who's coming to testify in
court, could have gotten that information from somewhere other
than the defendant --

A Right.

Q -- is that correct?

A Correct.

Q Or even just, generally, the informant's character for
truthfulness?

A Right. When a federal judge in California says that he's a
liar, that helps also.

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Q Okay. Exactly. And so then in this case, did you do all those things with respect to Mr. Beckcom?

A I certainly tried.

Q Okay. Did you show the jury that he had a motive for testifying?

A Of course.

Q All right. And that, actually, not only was he testifying in this case, but he had actually done it before, hadn't he?

A Yes.

Q I believe that in closing arguments, it was referred to as a craft that he was practiced at. Do you recall that?

A Yes.

Q All right. And you also were able to point out to the jury that he was a quadruple felony; is that correct?

A Best I remember.

Q A capital murderer?

What about his character for truthfulness? Did you do anything to attack Mr. Beckcom's character for truthfulness?

A Well, if a federal judge in California had made statements from the bench concerning his credibility and the fact that he was not a credible person, that he was a liar.

Q So you were able to show the jury in this case that he had actually, in fact, lied in another case --

A Correct.

Q -- as found by a federal Judge?

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1 A As I remember, I did that.

2 Q Did you call any witnesses with respect to Mr. Beckcom?

3 A I think I called Bret Liedtke and --

4 Q Okay. And then Mr. Liedtke, what -- why did you call him?

5 A Because Mr. Liedtke was aware that all this information
6 about Jeff's case was readily available to anyone at the FCI,
7 that everybody that -- that anybody who could read could say
8 that Jeff had confessed to it.

9 Q Okay. When you say "anybody who could read," why do you say
10 "anybody who could read"?

11 A Well, it was public record. It was --

12 Q Okay. And, in fact, you introduced evidence that Mr. Prible
13 was showing his probable cause affidavit around prison; is that
14 correct?

15 A Yes.

16 Q All right. And Mr. Liedtke testified that Prible talked
17 to -- his case to a lot of people?

18 A Right. Talked all the time.

19 Q Talked all the time, to the point that Mr. Liedtke told him
20 to stop talking; is that correct?

21 A Right.

22 Q All right. And so this probable cause affidavit, do you
23 recall what was in -- what kind of information was in the
24 probable cause affidavit?

25 A I don't remember.

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Q All right.

A I'm sure it's available.

Q All right.

MS. MIRANDA: Can you give me a second, Your Honor?

THE COURT: Yes.

BY MS. MIRANDA:

Q And I don't know. It might be easier if we hand you a copy of this, but can you take a second and review this? Do you recall seeing this at trial?

A Yes. I believe it was entered in evidence as an exhibit.

Q All right. And I'll give you just a second. And there's, actually, a second page, so if we need to hand you a physical copy, we can do that.

(Witness reviews document.)

BY MS. MIRANDA:

Q And I'll wait to proceed when you're ready, Mr. Gaiser.

A I can't see the whole thing.

MR. d'HEMECOURT: Are you ready to move?

THE WITNESS: Pardon?

MR. d'HEMECOURT: Are you ready for me to move it up?

THE WITNESS: Yeah. Please.

Can you just hand it to me?

MR. d'HEMECOURT: I can just hand it to him.

THE WITNESS: Do you know what page it's on?

MS. MIRANDA: Oh, may I approach, Your Honor?

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THE COURT: Yes, you may.

Can we put another copy up there?

MS. MIRANDA: I believe we probably can.

THE COURT: Yeah. Thank you.

THE WITNESS: Thank you.

THE COURT: Can we move it down a little bit?

(Witness reviews document.)

A What is your question?

BY MS. MIRANDA:

Q My question is that within this affidavit, does it contain the names of the victims?

A Yes.

Q All right. The location of their bodies in the house?

A Yes.

Q The manner of their death?

A I think it does, yes.

Q All right. Information about even the DNA, is that contained in the probable cause affidavit?

A Well, the --

Q And so your point at trial, was it not, was that anyone who had this type of information that was around Jeffrey Prible could have gotten this information from the probable cause affidavit; is that correct?

A And news reports, yes.

Q Okay. I'm going to show you -- I'm going to -- actually,

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1 I'm going to attempt to ask this question without putting them
2 up there. If you need the letters, then please let me know, and
3 I will put them up there.

15:01:22 4 But earlier during your testimony, you were asked about
5 letters that were written from Mr. Gonzalez, Mr. Walker, and
6 Mr. Mark Martinez. Do you recall that? Do you recall those
7 letters?

15:01:34 8 **A** Yeah. I had never seen those letters prior to being shown
9 that.

15:01:37 10 **Q** Okay. And so if you had seen those letters, what would you
11 have assumed with respect to the information that they had about
12 Mr. Prible?

15:01:49 13 **MS. SCARDINO:** Objection, Your Honor, calls for
14 speculation.

15:01:51 15 **A** I --

15:01:52 16 **THE COURT:** He can answer it.

15:01:53 17 If you can.

15:01:54 18 **THE WITNESS:** I can't answer that. I can't assume
19 what they might have known.

15:01:58 20 **BY MS. MIRANDA:**

15:01:59 21 **Q** Okay. So you would have received those letters, and you
22 wouldn't have done anything with them?

15:02:02 23 **A** Oh, I didn't say that. I said I wouldn't assume anything
24 from the letters other than there seemed to be a large -- a
25 majority of activity going on at the FCI involving these

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informants and Kelly Siegler.

Q Okay. And why do you say Kelly Siegler?

A If she had given them to me, I would assume that it would involve her.

Q Okay. So now you can assume?

A Yeah.

Q So now you're going to assume it has to do with Kelly Siegler. Is that your testimony?

MS. SCARDINO: Objection, Your Honor, harassing the witness.

THE COURT: I think you're saying the fact they're writing to Kelly Siegler would have alerted you to inquire further. Is that what you're saying?

THE WITNESS: Yes.

MS. MIRANDA: Okay. And if I may, Your Honor, I would like to probe a little bit.

BY MS. MIRANDA:

Q When you say assume Kelly Siegler, are you assuming that she is somehow complicit in these letters? Is that your testimony before the Court?

A No.

Q Okay. Then what is your testimony?

A That the letters would have alerted to -- me to something going on at the FCI involving all these informants, and I would have to investigate further to -- to determine what exactly was

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1 going on.

15:03:16 2 Q Okay. And would you agree with me that there's a big
3 difference between assuming that something is going on at FCI
4 Beaumont and assuming Kelly Siegler is involved?

15:03:25 5 A At this point in time, it's different than what I might have
6 done back then. So I -- you know, I assume -- I assume now
7 because the more I know about the case. Back then, I don't know
8 what I would have assumed.

15:03:37 9 Q Okay. And in what you know about the case, was that
10 information provided to you by the defense?

15:03:43 11 A By the defense, by his prior lawyers, by...

15:03:47 12 Q Okay. Fair enough. So then -- then let's look at these
13 letters individually.

15:03:54 14 I'm going to put up what has been marked as Petitioner's
15 Exhibit 36.

15:04:14 16 Is there anything in that letter that suggests that Mr. --
17 Ms. Siegler reached out to federal informants in the pen?

15:04:25 18 A No. I mean, it's -- Carl Walker is writing her a letter.

15:04:30 19 Q So it appears that Mr. Walker reached out to Ms. Siegler; is
20 that correct?

15:04:34 21 MS. SCARDINO: Objection, Your Honor, calls for
22 speculation.

15:04:36 23 THE COURT: Well, I don't think that's too much to
24 deduce. This letter sounds like he's ready to testify, doesn't
25 it?

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THE WITNESS: The -- yeah. It -- it doesn't establish

that he is the one that initiated the contact with Ms. Siegler.

All it indicates is that -- that he wants help with his sentence based upon what Jeff may or may not have said to him.

BY MS. MIRANDA:

Q And what would you have done --

A I would wonder --

Q I'm sorry.

A If I had that, I would wonder how he got Kelly Siegler's name --

Q All right.

A -- in this case.

Q Okay.

A I would begin to investigate that.

Q All right.

A I would start asking questions in those pretrial hearings about these other inmates and how they initiated contact with her.

Q Okay. Fair enough.

Would you have attempted to introduce these letters at trial?

A I don't know. That would depend on how the facts developed.

Q Would you have attempted to call any of these witnesses at trial?

A Same answer. It would depend on how the facts played out

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1 prior to trial in terms of who initiated contact, what the
2 contact was about, how often the contact was.

15:05:54 3 Q If you had known that there were other inmates in FCI
4 Beaumont that were on the government's witness list, would you
5 have investigated that?

15:06:05 6 A Certainly.

15:06:08 7 Q Do you recall whether you were aware of that?

15:06:10 8 A The government's -- the state's witness list?

15:06:13 9 Q Whether you were aware that there were other informants at
10 FCI Beaumont on this state's witness list?

15:06:20 11 A No. The only name I had heard with respect to Michael
12 Beckcom was Nathan Foreman.

15:06:26 13 Q All right. You don't recall the name Mark Martinez?

15:06:30 14 A No.

15:06:32 15 Q Or Jesse Gonzalez?

15:06:33 16 A No.

15:06:34 17 Q Felix Gonzalez?

15:06:36 18 A No.

15:06:37 19 Q Did you ever -- do you recall, in this case, providing
20 Mr. Liedtke with a copy of the government's subpoena list?

15:06:46 21 A I don't think there would be any reason for me to have given
22 that to Mr. Liedtke.

15:06:50 23 Q All right.

15:06:52 24 A I don't know. I certainly don't remember that --

15:06:55 25 Q Okay.

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A -- let me put it that way.

MS. MIRANDA: May I approach, Your Honor?

THE COURT: You may.

BY MS. MIRANDA:

Q I'm going to show you what's been marked as Petitioner's Exhibit 85, and at this point I just want you to read it and see if that refreshes your recollection.

MS. SCARDINO: Can we get a copy of that?

MS. MIRANDA: Yes.

MR. d'HEMECOURT: It's your 85.

MS. SCARDINO: My 85?

MS. MIRANDA: Yes.

(Witness reviews document.)

A I have not seen this before.

BY MS. MIRANDA:

Q All right. My question is --

A Oh, there's a back. There's this other --

THE COURT: Sorry?

THE WITNESS: There's a second page. I didn't realize.

THE COURT: Okay.

BY MS. MIRANDA:

Q And I believe it's the last part of the second page, if you'll look at that. The back page.

(Witness reviews document.)

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15:08:40 1 **A** I've never seen this.

15:08:41 2 **BY MS. MIRANDA:**

15:08:41 3 **Q** Okay. My question is: Does that refresh your
4 recollection --

15:08:45 5 **THE COURT:** What are we looking at? I'm sorry.

15:08:48 6 **MS. MIRANDA:** I apologize. We can put it -- put it up
7 there.

15:09:04 8 **THE COURT:** Who has written this? This is from the
9 captain at Beaumont to a technician at Beaumont to the associate
10 warden; is that correct?

15:09:18 11 **MS. MIRANDA:** Yes.

15:09:22 12 **BY MS. MIRANDA:**

15:09:23 13 **Q** And does it state in here that you -- Mr. Liedtke reported
14 that you showed him a copy of the subpoena list?

15:09:28 15 **MS. SCARDINO:** Objection, Your Honor. The document
16 says what it says, but he can't testify to it. He just said
17 he -- it doesn't refresh his recollection, and he didn't write
18 the document.

15:09:38 19 **THE COURT:** What's the purpose of this document?

15:09:40 20 **MS. MIRANDA:** Well, to under- -- the purpose of this
21 document is to see if it refreshes his recollection as to
22 whether he provided the subpoena list -- the government's
23 subpoena list to Mr. Liedtke. Mr. Liedtke, in this --

15:09:53 24 **THE COURT:** Liedtke. It says -- but how -- how would
25 this refresh him if he never saw it before?

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MS. MIRANDA: Just -- just to remind him of whether or not he did that, whether or not he showed -- because --

THE COURT: He would have no basis for knowing whether this document's authentic or accurate or anything else, would he?

MS. MIRANDA: No. And, Your Honor, this is not -- I'm not introducing this as an exhibit. This was simply to refresh his recollection.

THE COURT: Does this help refresh your recollection?

THE WITNESS: No, Judge. Part of it is erroneous, according to my recollection.

MS. MIRANDA: And for the record, Your Honor, this is the petitioner's exhibit. This is not our exhibit. This is their exhibit.

THE COURT: Well, but exhibits can be appropriate for one witness and not the other. I mean, I don't know how this could refresh him if he's not seen it before and he doubts its accuracy. But --

MS. MIRANDA: Your Honor, I don't believe he said he doubted its accuracy.

THE COURT: I thought --

THE WITNESS: I just did.

THE COURT: I thought you said it was erroneous.

THE WITNESS: Yes.

MS. MIRANDA: Okay.

Ms. Miranda Cross of Terry Gaiser**BY MS. MIRANDA:**

Q So then you do recall that you did not show Mr. Liedtke the government's subpoena list?

A The first -- the first erroneous statement is that I was given the subpoena list and told that I could -- the -- but a copy could not be provided to the involved inmates. That was never part of any agreement I had with the state, and as far as I know, I never saw their subpoena list.

Q Okay. So your testimony is you did not see their subpoena list?

A No.

Q All right.

MS. MIRANDA: One more moment, Your Honor. I think I'm almost done.

BY MS. MIRANDA:

Q Were you curious about Mr. Foreman at trial?

A I was just hopeful that no more people were coming at that point because I didn't think there were others.

Q All right. So you just testified that if you knew that there were other informants that had information, that you would want to investigate them. Was that your testimony?

A I would want to investigate further whether it was them or what their stories were or how they were involved --

Q All right.

A -- or what their backgrounds were. What they were in for,

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1 what --

15:12:30 2 Q And did you do that with respect to Mr. Foreman?

15:12:33 3 A I don't believe so, but I really don't remember at this
4 point.

15:12:36 5 Q So -- so you knew there was at least one other person that
6 was mentioned by Mr. Beckcom; is that correct?

15:12:41 7 A I knew Mr. Beckcom said that Mr. Foreman was present.

15:12:45 8 Q Okay. But you did not investigate him at the time of trial?

15:12:48 9 A Not that I remember.

15:12:49 10 Q But you would have investigated Carl Walker?

15:12:52 11 A If -- if I had known he was going to give a statement
12 against my client, of course.

15:12:58 13 Q Okay. And you would have investigated Mr. Martinez?

15:13:02 14 A If he was going to give a statement against my client, yes.

15:13:05 15 Q Okay. So is it your testimony, then, that you weren't
16 concerned about Mr. Foreman's credibility?

15:13:11 17 A No. He was not going to be a witness, as far as I knew.

15:13:15 18 Q Okay.

15:13:16 19 A Anything -- anything about Mr. Foreman would be hearsay.

15:13:21 20 Q And so you wouldn't have used anything about Mr. Foreman at
21 trial. Is that your testimony?

15:13:26 22 MS. SCARDINO: Objection, Your Honor, vague.

15:13:28 23 A Well, all I had was his name.

15:13:34 24 THE COURT: Well, there's evidence in the case that
25 Mr. Foreman met with Ms. Siegler and with an investigator.

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THE WITNESS: I knew nothing about that.

THE COURT: Okay. The question is: If you had known that, and if you had known they had considered him too unreliable to use as a witness, would that have been of interest to you?

THE WITNESS: Of course it would, Judge.

THE COURT: Okay. That's all she's asking, I think.

MS. MIRANDA: Actually, that was not my question, Your Honor.

THE COURT: Well, then, rephrase it. It sounded like that to me.

You said, "And so you wouldn't have used anything about Mr. Foreman at trial. Is that your testimony?" Without knowing what the evidence is as to Mr. Foreman, how can he answer that?

MS. MIRANDA: His -- his testimony was that if he knew there were other inmates at FCI Beaumont that had information on Mr. Prible, he would have wanted to investigate.

THE COURT: Right. Mr. Foreman claimed to have information.

MS. MIRANDA: Mr. Beckcom -- I'm talking about what he knew at the time of trial. At the time of trial, he knew that Mr. Beckcom indicated that Mr. Foreman was present during the confession.

A All I had was Beckcom's hearsay statement that somebody else

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1 overheard a conversation. I knew nothing about that and -- and
2 had no desire to go find someone that might corroborate
3 Beckcom --

15:14:58 4 **BY MS. MIRANDA:**

15:14:58 5 **Q** Okay

15:15:00 6 **A** -- at that point in time.

15:15:01 7 **Q** Fair enough.

15:15:01 8 **MS. MIRANDA:** I'll pass the witness.

15:15:03 9 **THE COURT:** Anything further?

15:15:04 10 **MS. SCARDINO:** No, Your Honor. We pass the witness.

15:15:06 11 **THE COURT:** You may step down. Thank you very much.
12 You may step down. Thank you very much.

15:15:10 13 **THE WITNESS:** Thank you, Judge.

15:15:13 14 **THE COURT:** Does that bring us to a close for today?

15:15:16 15 **MS. SCARDINO:** Yes, Your Honor. I just had a couple
16 of housekeeping measures I wanted to take up with the Court.

15:15:20 17 **THE COURT:** Okay.

15:15:22 18 **MS. SCARDINO:** I understand, from your local rules,
19 that all the exhibits on the pretrial order are admitted for
20 purposes --

15:15:27 21 **THE COURT:** Unless somebody objects to them.

15:15:28 22 **MS. SCARDINO:** Yes, Your Honor. And we had that
23 telephonic hearing last week where we addressed some of the
24 objections that the respondent had, and I -- I believe I
25 understood your ruling to be that they're admitted, or do we

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1 still need to take --

15:15:47 2 **MS. MIRANDA:** I believe it was that we were going to
3 take them up when they came up.

15:15:49 4 **THE COURT:** Yeah. I thought that was what we said.

15:15:51 5 **MS. SCARDINO:** Okay. Okay. I just wanted to make
6 sure that before this is over, we -- I've properly --

15:15:57 7 **THE COURT:** Have these exhibits come up? I didn't
8 hear any objection to the exhibits while we've been receiving
9 testimony.

15:16:02 10 **MS. MIRANDA:** I don't believe they've been offered,
11 Your Honor, but we haven't had any objections.

15:16:05 12 **MS. SCARDINO:** The ones that you've objected to, you
13 don't think they've come up yet?

15:16:08 14 **MS. MIRANDA:** No, the ones -- I don't believe so.

15:16:10 15 **THE COURT:** I've always found it much easier to take
16 up an objection to a document or exhibit when we're in -- in the
17 context of a trial. That way we can better judge things like
18 relevance or prejudice or --

15:16:22 19 **MS. SCARDINO:** Okay. So in my -- just so I'm clear,
20 if -- if it's listed on the pretrial order, and it's not
21 objected to during this hearing, it's going to be admitted?

15:16:32 22 **THE COURT:** Well, no, she's registered her objection.

15:16:34 23 **MS. SCARDINO:** Okay.

15:16:35 24 **THE COURT:** So we have an objection we have to deal
25 it.

15:16:37 1 **MS. SCARDINO:** Okay.

15:16:37 2 **THE COURT:** If it doesn't come up at all during the
3 course of the trial, you can either decide you don't need the
4 exhibit, or we're going to have a discussion in the abstract
5 about whether the exhibit ought to be admitted.

15:16:45 6 **MS. SCARDINO:** Okay. I understand, Your Honor. Thank
7 you.

15:16:47 8 **THE COURT:** Anything else?

15:16:48 9 **MS. SCARDINO:** One more additional exhibit [sic],
10 Your Honor.

15:16:50 11 **THE COURT:** Okay.

15:16:51 12 **MS. SCARDINO:** I wanted to ask if you might allow
13 Mr. Prible to have a hug with his family? Is that -- would that
14 be something the Court could allow?

15:16:59 15 **THE COURT:** It's really not my call. Does security --

15:17:02 16 **THE MARSHAL:** Your Honor, I think TDC has a -- a
17 policy, because of where he's being housed, that there's not
18 even -- they don't get contact visits.

15:17:14 19 **THE COURT:** I'm afraid that's the rule of the federal
20 court. I'm sorry.

15:17:17 21 **MS. SCARDINO:** That's okay, Your Honor. Thank you.
22 It was a request.

15:17:20 23 **THE COURT:** I'm not saying this would happen here, but
24 I used to get involved with how security concerns were dealt
25 with, and we had a horrible incident where a family member

1 slipped a razor blade to an inmate with disastrous consequences.
2 I'm not saying that would happen here, but I do understand the
3 need for the rules.

15:17:41 4 **MS. SCARDINO:** Yes. Yes, Your Honor. Thank you for
5 considering it.

15:17:44 6 *(Evening recess taken at 3:17 p.m.)*

7 -o0o-

8 I certify that the foregoing is a correct transcript
9 from the record of proceedings in the above matter.

10
11 Date: June 5, 2019

12 /s/ Heather Alcaraz
13 Signature of Court Reporter
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MR. d'HEMECOURT: [4]

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